

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,
Plaintiff,

vs.

AMIR A. BAJOGHLI,
Defendant.

Crim. No. 1:14cr278

November 17, 2015

JURY TRIAL

** EXCERPT: TESTIMONY OF MICHAEL PALIAN**

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: PAUL NATHANSON, AUSA
KATHERINE WONG, AUSA
MATTHEW BURKE, AUSA

FOR DEFENDANT: SCHULTE ROTH & ZABEL
BY: PETER H. WHITE, ESQ.
ARNOLD & PORTER
BY: KIRK OGROSKY, ESQ.
MURAD HUSSAIN, ESQ.
NICHOLAS DINGELDEIN, ESQ.

OFFICIAL COURT REPORTER:

RENECIA A. SMITH-WILSON, RMR, CRR
U.S. District Court
401 Courthouse Square, 5th Floor
Alexandria, VA 22314
(703)501-1580

1 (Thereupon, the following was heard in open
2 court at 10:02 a.m.)

3 THE CLERK: 1:14 criminal 278, United States
4 versus Amir A. Bajoghli.

5 MR. NATHANSON: Good morning again, Your
6 Honor. For the United States, Paul Nathanson, Katherine
7 Wong, Matthew Burke, Special Agent Mike Palian and Keeley
8 Sandvig.

9 MR. WHITE: Good morning, Your Honor. Peter
10 White for Dr. Bajoghli who is present. With me at
11 counsel table right now is Kirk Ogrosky. Nicholas
12 Dingeldein and Murad Hussain will be joining us shortly,
13 but we certainly don't need to wait for them.

14 THE COURT: That's fine.

15 Good morning, Dr. Bajoghli.

16 Good morning, counsel. Ready to bring the
17 jury out?

18 MR. NATHANSON: Your Honor, there was just
19 one really quick issue. You had asked -- there was an
20 objection yesterday to, I think, Government's
21 Exhibit 123-1 -- I'm sorry, 123 which was a description
22 of medical assistant Tanya Milan's duties.

23 THE COURT: Yes.

24 MR. NATHANSON: And there was question as to
25 whether there was actually testimony about Ms. Milan's

1 conducting wound repairs.

2 We have collectively reviewed our notes last
3 night and have identified testimony by medical
4 assistants, Roma Zekria and also Marina Yemdin to the
5 effect that Ms. Milan was one of the --

6 THE COURT: Roma, what's the last name?

7 MR. NATHANSON: Zekria, Z-E-K-R-I-A. And she
8 testified -- I believe she testified to this, Your Honor,
9 on Thursday, October 29th.

10 THE COURT: Okay.

11 MR. NATHANSON: And then Marina Yemdin,
12 Y-E-M-D-I-N, I believe. And, in our notes, she also
13 identified Ms. Milan as one of the people --

14 THE COURT: Did she testify on the same day,
15 October 29th?

16 MR. NATHANSON: Your Honor, I believe she
17 testified on Tuesday, November 10th. She may have
18 started on Monday, November 9th, Your Honor, after -- I
19 don't know if she started after the defense expert or
20 not.

21 THE COURT: Yeah, she started on the 9th, and
22 10th.

23 MR. NATHANSON: I think it's the 10th, Your
24 Honor, that she testified to this. And I can -- I
25 discussed this with Mr. White this morning. I don't

1 think he has any recollection to the contrary, but I just
2 wanted to put on the record that this is before the jury
3 and there are percipient witnesses who have identified
4 Ms. Milan as one of the medical assistants who was doing
5 this.

6 MR. WHITE: Your Honor, I don't disagree with
7 Mr. Nathanson's recollection. Mine is the same after
8 looking at my notes. She was identified as someone who
9 did wound closures.

10 I've two objections. I have an objection to
11 this on two separate grounds. One is she's not testified
12 as a witness here, so I think it's -- it's confusing and
13 irrelevant also because she has not been identified.

14 As a matter of fact, they've identified who
15 did the wound closures for all of these, and I believe it
16 was Ms. Yemdin. None of the wound closures at issue
17 were -- here were done by Tanya Milan. So that's my
18 objection to that piece, its relevance.

19 THE COURT: All right.

20 MR. NATHANSON: Your Honor, I'm not sure we
21 know precisely who did the wound repairs that are charged
22 in this case. Our evidence, we believe, shows that it
23 was a medical assistant, and it was not Dr. Bajoghli.

24 But Ms. Yemdin's testimony was that she
25 didn't -- she thought she might have done them. She

1 didn't know. So we need to prove up that there were
2 other medical assistants doing them. Certainly part of
3 the fraud scheme is that there were a series of medical
4 assistants who were doing unsupervised wound repairs.

5 The fact that Ms. Milan hasn't testified
6 doesn't matter because there are witnesses who personally
7 observed Ms. Milan do the repairs, and they've testified
8 about that.

9 THE COURT: So why do you need the statement?

10 MR. NATHANSON: Because they are false
11 statements by the defendant as to what these medical
12 assistants were doing. These are very probative, Your
13 Honor. These are --

14 THE COURT: I saw what they were. It was a
15 summary of someone's statement. I don't know who
16 produced it. I don't know how the FBI got it. So that
17 wasn't -- no foundation was laid for that.

18 MR. NATHANSON: I'm sorry. I thought I had
19 it, and I can reiterate. We have a stipulation with the
20 defense that these are documents that Dr. Bajoghli
21 provided to the Virginia Department of Health
22 Professionals. So these are statements of the defendant
23 regarding matters that are at issue in this case. And we
24 submit, Your Honor, that these are false statements
25 because he's telling --

1 THE COURT: I'm just focused on the issue
2 they are statements of him that he made that are relevant
3 to the case so they would be admissions, wouldn't they?

4 MR. NATHANSON: Yes, Your Honor, absolutely.

5 THE COURT: Then they will be admitted. 129
6 will be received.

7 MR. NATHANSON: 123 and --

8 THE COURT: 123 and 129?

9 MR. NATHANSON: 123 and 123-1. I believe
10 they're actually admitted yesterday, but we appreciate
11 that for the Court's clarification.

12 THE COURT: Just one second.

13 123-1 was admitted. 123 was not. Now, 123
14 is being admitted.

15 MR. NATHANSON: Thank you, Your Honor.
16 Appreciate that.

17 THE COURT: Number 123-1 was admitted, right?
18 All right. You can bring our jury out.
19 Thank you.

20 MR. NATHANSON: Your Honor, should the
21 witness take the stand?

22 THE COURT: Yes, that's fine.

23 You may be seated.

24 Good morning, ladies and gentlemen.

25 THE JURORS: Good morning.

1 THE COURT: Good morning, Dr. Bajoghli.

2 DR BAJOGHLI: Good morning.

3 THE COURT: Good morning, Agent.

4 THE WITNESS: Good morning, sir.

5 THE COURT: Ready to proceed?

6 MR. NATHANSON: Thank you, Your Honor.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. NATHANSON:

9 Q. Good morning, Special Agent Palian.

10 A. Good morning, Mr. Nathanson.

11 Q. I want to return first, Special Agent Palian, to
12 some of the documents you were discussing as part of your
13 testimony yesterday.

14 Do you have Government's Exhibits 123 and 123-1 in
15 front of you?

16 A. Yes, I do.

17 Q. And are these documents that the defendant
18 provided to the Virginia Department of Health
19 Professionals?

20 A. Yes, they are.

21 Q. Let's put up first Government's Exhibit 123,
22 please, which is in evidence.

23 And Special Agent Palian, what medical assistant
24 is identified on Government's Exhibit 123?

25 A. Tanya Milan is identified in that exhibit.

1 Q. And what is the subject matter of the bottom half
2 of this document regarding medical assistant Tanya Milan?

3 A. The subject matter is that the MA understands that
4 her role was purely assisting in wound repairs and then
5 goes into several things that the MA does and does not do
6 during wound repairs.

7 Q. Okay. So, if you could just walk through for the
8 jury, what does it state under the statement that the MA
9 understands her role is purely assisting with the
10 closures.

11 A. Sure, it says here "the MA understands her role is
12 purely assisting with the closures and A, does not make
13 any medical decisions.

14 "B, does not render any professional judgment" --
15 I'm sorry, "does not render professional judgment.

16 "C, does not decide whether a defect is closed or
17 allowed to heal in by second intention. This decision is
18 always made by the physician.

19 "D, does not decide on the choice of sutures and
20 always asks the physician for the exact specifications of
21 the sutures, although she has complete knowledge of the
22 sutures.

23 "E, does not make any decisions on the way the
24 defect is closed and always follows the physician's
25 instructions.

1 "F, any and all questions will be discussed with
2 the physician including any concerns a patient may have."

3 Q. Okay. Now, if -- do you have 123-1 in front of
4 you as well?

5 A. I do.

6 Q. And is this a similar document for another medical
7 assistant?

8 A. Yes, it is.

9 Q. And which medical assistant does this document
10 relate to?

11 A. This document relates to Marina Yemdin.

12 Q. And just focusing on the second half of the
13 document, I don't want to have you read it, Special Agent
14 Palian, but just does this basically have the same -- the
15 same information regarding Ms. Yemdin's role in
16 performing wound repairs?

17 A. Yes, it has the same information in that she's
18 purely assisting with the closures.

19 Q. I think you can go ahead and put that one down. I
20 want to turn your attention now, Special Agent Palian, to
21 Government's Exhibit 116 which is already in evidence and
22 this is the document that you were testifying about when
23 we hit the 5 o'clock -- the 5 o'clock limit there
24 yesterday.

25 And I believe you testified that this is -- this

1 is claims data from the EDI Gateway, the electronic data
2 provider that the defendant's practice used; is that
3 correct?

4 A. That's correct.

5 Q. And I believe you testified that these were --
6 well, let me ask you. So I think you already testified
7 about all of these columns up to through the submission
8 of date of service start. And last thing I want to ask
9 you about was the procedure code on these.

10 What does it mean by procedure code as far as the
11 claim data is concerned?

12 A. So procedure codes also referred to as CPT codes
13 and that's a five digit code for the procedure that was
14 performed on that patient on that day.

15 Q. And does this identify the Mohs surgery codes for
16 these patients?

17 A. Yes, these were all Mohs surgery codes.

18 Q. Thank you. You can go ahead and put that one
19 aside.

20 Now, did you also excerpt some claims data from
21 the defendant's Metasoft program?

22 A. Yes, I did.

23 Q. And, I'd like, with the assistance of the court
24 security officer, for you to take a look at Government's
25 Exhibits 114 and 117.

1 MR. NATHANSON: And Your Honor, we have a
2 stipulation that these are from the defendant's Metasoft
3 program. We would move them in at this time.

4 MR. WHITE: No objection.

5 THE COURT: All right. 114 and 117 will be
6 received. Thank you.

7 MR. NATHANSON: Thank you, Your Honor.

8 Ms. Sandvig, go ahead and pull up --

9 Q. Before we do that, Special Agent Palian, do you
10 recognize these as excerpts that you pulled from the
11 defendant's Metasoft claims data?

12 A. Yes, I do.

13 Q. So, let's start with 114, please.

14 MR. NATHANSON: And, Ms. Sandvig, see if you
15 can just pull up that first page, if you can blow up that
16 box a little bit.

17 Q. Well, we'll walk you through. So, which -- which
18 claims are included in Government's Exhibit 114, please?

19 A. These appear to be the Mohs counts in the
20 indictment.

21 Q. And, let's just walk through briefly if we can, I
22 don't want to go through every row, but just in terms of
23 the columns going left to right, what information is
24 included from the claims data on this exhibit?

25 A. So, included in this exhibit are the patient's

1 last name and first name. Date from is the date of
2 service that that patient was seen. Attending provider
3 is the office that patient was seen and then the doctor
4 that patient was seen. So, DR WB is Dr. Bajoghli in
5 Woodbridge. DR TYS is Dr. Bajoghli in Tysons Corner.

6 The procedure code is the CPT code, and those were
7 all Mohs codes. The number of units are the number of
8 times that that code was performed on that day. Across
9 here are the amounts received by insurance. The
10 guarantor amount is how much the patient paid. Insurance
11 one is how much the primary insurance paid, and insurance
12 two is how much the secondary insurance paid.

13 User code is the staff member who updated that.
14 The allowed amount is what insurance -- the contracted
15 rate that insurance has agreed to pay for that procedure.
16 Then there's three of the diagnosis codes or four,
17 actually, four diagnosis codes.

18 Q. And these were also known as ICD9 codes?

19 A. That's correct.

20 Q. Okay.

21 MR. NATHANSON: Ms. Sandvig, go ahead and
22 turn to the second page of the exhibit, please.

23 Q. And there's additional data that's excerpted here
24 related to each one of these counts. What's the -- what
25 are the longer explanations that are included on the

1 second and third page?

2 A. Sure. The longer explanations that are
3 descriptions of the CPT codes and the ICD9 codes.

4 Q. So, these are essentially the descriptions of the
5 codes that you referenced on the first page of the
6 exhibit just put out in words?

7 A. That's correct.

8 Q. Okay. And again you didn't put these in, Special
9 Agent Palian. This is just from the Metasoft data?

10 A. This is straight from the Metasoft data, yes.

11 Q. So, turn now if you would to Government's
12 Exhibit 117, please. So, you testified that 114 was the
13 Mohs counts. What's included on 117?

14 A. On 117 includes the wound repairs counts and the
15 pathology counts.

16 Q. And if you could just walk briefly through the
17 columns from left to side, just explain to the jury
18 what's excerpted here in terms of the claims data.

19 A. Sure. And a lot of these columns are very
20 similar. We have again the last and the first name of
21 the patient, the date that patient was seen in the
22 office, the attending provider -- and these are all
23 doctor WB. The procedure code is the CPT code. So the
24 13000, 14000 and 15000 codes are all wound repairs and an
25 88000 codes are all pathology codes.

1 Q. And do those codes that you identify now, do they
2 correspond to the code descriptions that are there on the
3 far right of the excerpt?

4 A. Yes, they do.

5 Q. And then in between is it information related to,
6 as you described on the prior exhibit information related
7 to the amount that was paid on the different -- by the
8 different insurance companies?

9 A. Yes.

10 Q. Okay. You can go ahead and put those to the side.
11 Now, in addition to excerpting data, did you also,
12 Special Agent Palian, prepare some of your own summary
13 exhibits?

14 A. Yes, I did.

15 Q. At this time I ask the court security officer to
16 pass you a number of exhibits from the 300 series, 303,
17 304, 305, 306, and 307, please.

18 MR. WHITE: Your Honor, the rulings
19 yesterday, so that we can make things go more smoothly
20 today, can my objections be preserved so I don't have to
21 interrupt today.

22 THE COURT: Exactly, the record should
23 reflect that outside the presence of the jury, we took
24 out up certain exhibits and discussed them and rulings
25 were made and those rulings would apply, so the defense

1 doesn't have to make any additional objections for the
2 record.

3 Thank you

4 MR. NATHANSON: Thank you, Your Honor.

5 BY MR. NATHANSON:

6 Q. Do you have those in front of you, Special Agent
7 Palian?

8 A. I have 305 -- I'm sorry, 303 through 307.

9 Q. Let's go through these. I'm not going to go
10 through them in the exact order, but let's just go
11 through them one by one. Let me ask you some general
12 questions first. Did you prepare all of these, these
13 summary exhibits?

14 A. I did prepare these.

15 Q. And just as a general matter, where did the
16 information come from on all the exhibits?

17 A. The information came from several sources, some
18 from the Gateway EDI information, some from the
19 defendant's Metasoft, some from e-mails written by the
20 defendant.

21 Q. And what steps have you taken to insure the
22 accuracy of all these materials?

23 A. I've double checked and triple checked them all.

24 MR. NATHANSON: So Your Honor, I believe 303
25 and 304 are already in. At this time we moved in 305,

1 306 and 307.

2 THE COURT: All right, they're received over
3 objections. Thank you.

4 MR. NATHANSON: Thank you.

5 BY MR. NATHANSON:

6 Q. So let's start with 303, Special Agent Palian, and
7 Ms. Sandvig if you can go ahead and put up 303 on the
8 screen.

9 And this is a two page exhibit, is that right,
10 Special Agent Palian?

11 A. Yes, there's two pages here.

12 Q. And what did you summarize in Government's
13 Exhibit 303?

14 A. In 303, we summarized the indictment counts in so
15 much as we talked about the patient, the date of service,
16 the date the claim was actually submitted, to what
17 insurance company it was submitted to and how much the
18 defendant was paid for each claim.

19 Q. And, did this come from the claims data you've
20 already described, the Gateway EDI, Metasoft and so on
21 and so forth?

22 A. Yes, it did.

23 Q. So, on the first page, 1 through 17, are those the
24 Mohs counts?

25 A. Those are the Mohs counts 1 through 17.

1 Q. And the wound repair counts?

2 A. The wound repairs counts are 18 through 32.

3 Q. And now we're on the second page, and then the
4 final set there on the second page are the pathology
5 counts; is that right?

6 A. That's 33 through 43.

7 Q. Okay. Now, I want to focus your attention on just
8 three of the Mohs counts for a moment.

9 And I'd like to bring up the first page. I'd like
10 to keep up the first page of 303 and the first thing I'd
11 like to pull up next to it is Government's Exhibit 1-F
12 which is already in evidence.

13 Do you recognize 1-F, Special Agent Palian?

14 A. Yes, I do.

15 Q. And is this an outside pathology report for
16 Frederick Farber who is associated with Count 1 of the
17 indictment?

18 A. Yes, it is.

19 MR. WHITE: Your Honor, could I have a
20 moment?

21 BY MR. NATHANSON:

22 Q. And, this is an outside pathology report from
23 Washington Pathology for Mr. Farber; is that right?

24 A. Yes, it is.

25 Q. And what's the reported date for the outside path

1 report that diagnosis Mr. Farber with verrucae vulgaris?

2 A. This report was reported on June 4th, 2009.

3 Q. And, what's the handwritten date where it says --
4 I'm not sure I can make out the -- what's the date? Can
5 you identify that date?

6 A. That date looks to be June 5th, 2005.

7 Q. Okay. And what was the date that Mr. Farber's
8 claim was submitted to Medicare in Count 1?

9 A. That claim was submitted June 11th, 2009,

10 Q. And how does the claim submission date relate in
11 time to the outside path report that came back diagnosing
12 Mr. Farber's ear lesion?

13 A. That path report came back before the claim was
14 submitted.

15 MR. NATHANSON: I want to next -- I want to
16 keep up 303, Ms. Sandvig, and I'd like to also pull up
17 next to it, Government's Exhibit 2-F to be the same
18 thing.

19 Q. And do you recognize Government's Exhibit 2-F,
20 sir?

21 A. Yes, I do.

22 Q. And which patient is this one for?

23 A. 2-F is for Larry Brooks.

24 Q. And what's the date that Mr. Brooks outside
25 pathology results were reported to Dr. Bajoghli's

1 practice?

2 A. Those results were reported on July 10th, 2009.

3 Q. And, it's right there at the top. What was the
4 date that the claim was submitted for Mr. Brooks to the
5 insurance company?

6 A. Looks like it was submitted -- let me check here,
7 June 14, 2009.

8 Q. And again, how does the claim submission dates for
9 Mr. Brooks relate to the date that the path report was
10 reported to Dr. Bajoghli's office?

11 A. That pathology report was received before the
12 claim went out.

13 Q. And the last one I want to direct your attention
14 to is Government's Exhibit 12-E, please.

15 And do you recognize 12-E, Special Agent Palian?

16 A. Yes, it's a pathology report for Jan Buccola.

17 Q. And what's the date of the report for
18 Mrs. Buccola?

19 A. The date of the report was December 8th, 2010.

20 Q. And, according to your summary exhibit, what was
21 the date that Ms. Buccola's claim was submitted to
22 Medicare for her Mohs surgery?

23 A. That claim was submitted December 9th, 2010.

24 Q. And again, that was after the date of the path
25 report; is that right?

1 A. It was submitted after the date of the path
2 report, that's right.

3 Q. And, can you go ahead and put those exhibits to
4 the side. And I want to focus your attention next on
5 Government's Exhibit 306, please.

6 MR. NATHANSON: And Ms. Sandvig, if you can
7 blow up the actual text there, make it easier for
8 everybody.

9 Q. What's summarized in your Exhibit 306, Special
10 Agent Palian?

11 A. Summarized in 306 are all of the Mohs counts next
12 to it with the diagnosis that was on the frozen section
13 pathology report and their file and then how much the
14 defendant was paid for the Mohs surgery and the
15 subsequent repair that was necessary after that Mohs
16 surgery.

17 Q. And that was the repair for that actual Mohs
18 procedure; is that right?

19 A. For that actual wound, yes.

20 Q. Was does it mean, for instance, when it's zeros
21 there?

22 A. That means the wound was closed by second intent
23 healing and that there no wound repair conducted.

24 Q. There was no charge?

25 A. There was no charge for it.

1 Q. Okay. And was the total paid, the Mohs plus the
2 repair paid?

3 A. Yes, it is. It's the sum of those two columns.

4 Q. This is for each of those Mohs procedures.

5 Now as part of your investigation, Special Agent
6 Palian, have you determined approximately what the
7 payment would have been for a procedure like cryo freeze?

8 A. Yes, I have.

9 Q. And, how did you determine what that would be?

10 A. I went back and looked at publicly available
11 information that relates to what the payment rate was for
12 those time periods for that procedure.

13 Q. And what did you determine in terms of Medicare's
14 contract payment for something like cryo freeze?

15 A. It depends on what year the claim was filed, but
16 if a cryo freeze had been billed, it would have paid
17 between 65 and \$80.

18 Q. And you say it depends on the year. Is that
19 because the dollar amounts go up each year a little bit?

20 A. They vary some. Actually they went down some
21 years. Some years they went up.

22 Q. You can go ahead and put that one to the side and
23 have you focus next on your Exhibit 304, please.

24 Could you explain to the jury, please, what's
25 summarized in Exhibit 304?

1 A. Sure. These again are all the Mohs counts. And
2 if I can draw on the telestrator (phonetic) again, the
3 patient that had the Mohs surgery is in this column.
4 That's followed by the diagnosis that was on the frozen
5 section pathology report for that surgery in Dr.
6 Bajoghli's files.

7 In this column, we have the ICD9 code that was
8 billed to insurance for that procedure and then a
9 description of the ICD9 code that was billed.

10 Q. Okay. And these are descriptions -- these are
11 from the ICD9 book that's relied on by medical
12 professionals; is that right?

13 A. Yes.

14 Q. And all of these are diagnosis codes for different
15 types of cancer, right?

16 A. Yes, they are.

17 Q. Okay. And, at least with respect to lines two,
18 and 12, there's a disconnect between the diagnosis code
19 that was submitted via insurance company and what was in
20 the frozen section path report; is that right?

21 A. There is a disconnect.

22 Q. In that the frozen section path report is a
23 noncancerous diagnosis, right?

24 A. That's right. The frozen section for those was
25 not cancer.

1 Q. You can put that down, Special Agent Palian. And
2 I want you to focus next on Government's Exhibit 305,
3 please. And I'm going to pull that one up.

4 What is summarized, Special Agent Palian, in 305?

5 A. Government's Exhibit 305 is a wound repair summary
6 chart.

7 Q. So, let's walk through from left to right and I'd
8 like you to explain what's in each column and where the
9 data in each column came from.

10 A. Sure. The first column is the count that it
11 relates to in the indictment. The second column is the
12 redacted patient name. The third column is the -- I'm
13 sorry, it's not working now. Oh, there we go.

14 The third column is the date of service which is
15 when that procedure was performed on that patient. The
16 fourth column describes the wound repairs that was
17 performed on that patient. So it's a description, not
18 the CPT code.

19 The fifth column is the office that that wound
20 repair was performed in and that information comes from
21 the day folders.

22 Q. And when you say day folders, is that where the
23 super bills and the sign-in sheets were located?

24 A. Super bills and sign-in sheets were located in
25 those folders, yes.

1 Q. Okay. Now, next to that, you've got "Dr. Bajoghli
2 per Metasoft and per e-mail", what's described there?

3 A. That's Dr. Bajoghli's location based on the
4 Metasoft data and the e-mails that we recovered.

5 Q. Okay. So when you say per Metasoft, was that the
6 practice -- the practice's scheduling software?

7 A. Yes, it was.

8 Q. Okay. So, for instance, when it says "out of
9 office on June 7, 2012", is that what's actually on the
10 schedule?

11 A. That's what it said on the schedule.

12 Q. And in the other instances, according to your
13 review and summary of the schedule, Dr. Bajoghli was in
14 Tysons; is that right?

15 A. That's right.

16 Q. The Tysons office.

17 What about per e-mails, what e-mails are you
18 referring to there?

19 A. We're referring to the e-mails that went between
20 the billing staff and the doctor, detailing how many
21 patients were seen by which practitioners in which office
22 on which dates.

23 Q. And, does the column to the immediate right of
24 that, does it actually reference the government's exhibit
25 numbers for those e-mails?

1 A. Yeah, it summaries the government exhibit number.

2 Q. So, those are the e-mails that were presented that
3 showed -- that listed the providers and identified how
4 many patients they had seen in a particular office on a
5 particular day?

6 A. Yes, they were.

7 Q. Okay. Now, let's go over to the provider on the
8 claim. Where does that information come from?

9 A. That information comes from the Gateway EDI.

10 Q. And, in all cases, who was the provider on the
11 wound repair claim that was submitted to the insurance
12 companies?

13 A. That was Dr. Bajoghli that was on the claim.

14 Q. And the last column is licensed practitioner on
15 site. What's identified here?

16 A. What's identified there is the practitioner that
17 was in Woodbridge for all of these cases on those days.

18 Q. Okay. And does this list -- and what did you base
19 that summary on, what documents?

20 A. We based that off of super bills and off of the
21 schedule.

22 Q. And, in all of those instances, did those records
23 reflect that only Janet Rasmussen was present in the
24 office?

25 A. That's correct.

1 Q. Lastly, Special Agent Palian, I want to focus your
2 attention on Government's Exhibit 307.

3 If we could blow up the box there for 307.

4 Now, what's summarized in Government's
5 Exhibit 307, Special Agent Palian?

6 A. Here we're summarizing the locations that claims
7 went out under the defendant's NPI number for that day.

8 Q. Okay. So, the days of service on the far left and
9 the related counts, are those wound repairs counts?

10 A. Those are all wound repairs counts date.

11 Q. Okay. And what are the Xs in all three locations
12 reflect for each of those days?

13 A. That reflects that Dr. Bajoghli's number was used
14 to bill insurance from those locations on those dates, if
15 there's an X there.

16 Q. So on each of the days that the wound repairs were
17 performed, the defendant billed his NPI for each of his
18 office locations?

19 A. Each of his office locations, yes.

20 MR. NATHANSON: Court's indulgence.

21 We pass the witness. Thank you.

22 MR. WHITE: May I proceed, Your Honor?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. WHITE:

1 A. Good morning, Mr. White.

2 Q. Good morning, Special Agent Palian. How are you?

3 A. I'm well, thank you.

4 Q. You started your testimony by saying you had been
5 involved in this investigation since December of 2011.
6 Do I have that date right?

7 A. Approximately. I think it may have been the end
8 of November, 2011, the beginning of December.

9 Q. So, just about four years at this point?

10 A. Almost.

11 Q. There was a case file opened prior to the time --
12 there was an FBI case file opened prior to the time you
13 became involved in it?

14 A. Yes, there was.

15 Q. And that case file was opened by another agent,
16 and the investigation started an investigating Dr.
17 Bajoghli, because the spouse of an FBI agent had
18 complained about not getting certain information from his
19 practice. You know that?

20 A. I don't remember coming from the spouse of an FBI
21 agent, but I know that the investigation was initiated on
22 a complaint.

23 Q. It was a complaint from somebody related to actual
24 FBI agent, correct?

25 A. I don't recall that. I'm not sure. If there's a

1 document that can refresh my memory, I'll take a look at
2 that but I don't recall that.

3 Q. I may come back to that. But there would be a FBI
4 form 302 or some other form that would be at the
5 beginning of your file that would reflect how it started?

6 A. Yeah, it's an FT-71 complaint form, but yes.

7 Q. Right. So, you recall there was a complaint but
8 you don't recall it being related to an FBI agent?

9 A. It may have been. I just don't recall that.

10 Q. Okay. You were shown some Virginia Board of
11 Health documents, Government's Exhibit 122 and 123 if you
12 need to see them I'm happy to bring them up.

13 A. I'd like to see them again if you don't mind.

14 Q. Okay. Do you have those in front of you?

15 A. I don't have them in front of me.

16 Q. Actually let me finish the first point now that I
17 have the --

18 A. Sure.

19 Q. -- document in front of me. Do you have 122 in
20 front of you now?

21 A. I have 122 in front of me, yes.

22 I'm going to show you what I will have marked for
23 identification purposes only as Defendant's Exhibits 161
24 and 162.

25 Handing you first Exhibit 161.

1 A. Okay, I've got 161, sir.

2 Q. And is that the document that opens the
3 investigative file?

4 A. Yes, it is.

5 Q. The one you were talking about previously?

6 A. The FT-71.

7 Q. And the person that opened the FBI file was whom?

8 MR. NATHANSON: Your Honor, I thought this
9 was -- I'm objecting. I thought this was being used to
10 refresh his recollection which is fine. But putting the
11 documents in, he shouldn't be reading the documents.

12 THE COURT: That's correct. Objection
13 sustained.

14 BY MR. WHITE:

15 Q. Okay. Does that refresh your recollection what
16 complaint started the investigation?

17 A. It does.

18 Q. Okay. And, it was from -- an individual that's
19 listed in that document; is that correct?

20 A. Yes.

21 Q. Okay. If I could show you now what's marked for
22 identification only as 162, with your help, please.

23 And, that's an FBI form 302 report of interview
24 that was also in your investigative file --

25 A. Yeah, that --

1 Q. -- before you got involved?

2 A. I'm sorry. I didn't mean to interrupt.

3 Q. That's okay. That was in the file before you got
4 involved, right?

5 A. Yes, it was.

6 Q. And you're familiar with that document because you
7 would review the whole file?

8 A. Yes.

9 Q. And, does that refresh your recollection that the
10 initial complaint that started this entire investigation
11 was a complaint by the spouse of an FBI agent?

12 A. Yes.

13 Q. Okay. Now, if we could turn to -- with your
14 assistance, if he could get Government's Exhibits 122 and
15 123. Do you already have them? Okay, terrific.

16 My question -- you testified that those documents
17 came from the Virginia Board of Health, correct? I may
18 have that title wrong. Where did it come from?

19 A. The Department of Health Professionals.

20 Q. The Department of Health --

21 A. Health Professions.

22 Q. And those documents came from a proceeding that
23 was begun by them to determine whether there should be
24 any action taken on Dr. Bajoghli's professional license,
25 correct?

1 A. Correct.

2 Q. And, that proceeding was started by you, correct?

3 A. That's correct.

4 Q. You referred information to them from your
5 investigation and asked them to begin an investigation
6 regarding his license, correct?

7 A. I didn't ask them to begin an investigation. I
8 just provided them with the information.

9 Q. You provided them with the information that --
10 that started this investigation by them, correct?

11 A. Correct.

12 Q. And they have to date taken no action again Dr.
13 Bajoghli's license, correct?

14 A. They're pending the outcome of the criminal
15 investigation is my understanding of the situation.

16 Q. And they haven't suspended his license?

17 A. They have not.

18 Q. If you could look at 123-1, please.

19 MR. WHITE: Can I get you to pull that up,
20 Ms. Sandvig, please. If you could blow up the top half,
21 please.

22 Q. I'd like to ask you, if you could, to look at the
23 top half of that document.

24 A. Yes.

25 Q. And could you please read what is in the top half

1 of that document, please, in the record.

2 A. The entire top half?

3 Q. You can start at "she has" --

4 A. Okay.

5 Q. -- regarding Marina Yemdin.

6 A. "She's had over six years of experience working
7 for a busy Mohs surgeon in Brooklyn, New York and a
8 veterinary practice prior to her dermatology office
9 experience. She has a bachelor degree in biology from
10 Brooklyn College. She worked side by side and one on one
11 with me during repair procedures in the office in over
12 100 cases and I have -- I have personally observed her
13 placing sutures, both subcuticular and on the skin edges.

14 "She has performed flawlessly and has an
15 impeccable technique and skills with final results
16 indistinguishable from my own work.

17 "Marina is currently enrolled in RN program -- is
18 currently enrolled in RN program and will be receiving
19 her RN in May, 2013, and will continue on for her nurse
20 practitioner degree".

21 Q. So, that was also on the document that you read
22 that you got from the Virginia Department of Health
23 Professionals; is that correct?

24 A. Yes.

25 Q. Thank you. There's an exhibit that's been used a

1 number of times in this case and you can get it from the
2 court security officer, exhibit, I believe, it's 112.
3 That's the paper form.

4 A. The CMS 1500.

5 Q. The CMS 1500 form, you recall that?

6 A. I think it is 112.

7 Q. My question is really not about that document.
8 That's the document that has the very fine print on the
9 back --

10 A. Yes.

11 Q. -- that the individual yesterday had to get the
12 magnifying glass to read, that one?

13 A. I think she got a magnifying glass, yes.

14 Q. Okay. So my question is, the claims that were
15 submitted in this case, all of those claims were actually
16 submitted electronically instead of by paper. Am I right
17 about that or am I wrong?

18 A. That's my understanding.

19 Q. So that actual document wasn't actually used for
20 knife of the claims, that paper document wasn't used for
21 any of the claims at issue in this case?

22 A. My understanding, though, is that all of the
23 information transmits electronically that was on the
24 paper form.

25 Q. Right. But that wasn't actually my question.

1 A. Okay, pardon me.

2 Q. My question was that paper form was not actually
3 used for any of the claims in the case?

4 A. This piece of paper was not submitted.

5 Q. The way they were submitted was through an
6 electronic document that has the same boxes to check and
7 the same information to fill in, correct?

8 A. Yes, that's my understanding, right.

9 Q. Right. And, that obviously is an electronic
10 document. It doesn't have a back of the page as this one
11 does, right?

12 A. My understanding is that all that information --

13 THE COURT: We want to know what you know,
14 not what you understand. If you've seen it that's one
15 thing. If you haven't seen it, then you can't testify to
16 it.

17 THE WITNESS: Okay. No, I haven't. I
18 haven't seen it.

19 BY MR. WHITE:

20 Q. So you haven't actually looked at the -- the
21 electronic form, that is, the way that all of the claims
22 actually submitted here were submitted; is that right?

23 A. No, I looked at the electronic form. It was done
24 through Metasoft.

25 Q. So, you know that it was done through Metasoft but

1 you haven't actually looked at the form that's used when
2 that is being filled out by the biller; is that right?

3 A. We purchased a copy of Metasoft and I actually
4 looked at that.

5 Q. Okay, got it. And that form, instead of being the
6 paper form, it has dropped down boxes and things like
7 that, I assume?

8 A. It has dropped down boxes.

9 Q. Okay. Um, so, in connection with this case, you
10 purchased a copy of the Metasoft software; is that right?

11 A. Yes, I did.

12 Q. And, the -- had you ever used Metasoft before?

13 A. No.

14 Q. Okay.

15 A. I'm not a biller.

16 Q. So you had to learn how to navigate through that
17 system as you went through this case --

18 A. Yes.

19 Q. -- to extract the data you use to build the charts
20 that you've presented?

21 A. No, that's not the way it happened. We -- we
22 took -- it was my computer forensic people. They took
23 the doctor's data, cracked into it and extracted out
24 spreadsheets and access data tables.

25 Q. So you didn't actually do the work that went into

1 compiling these spreadsheets or the charts that you put
2 in evidence today; is that right?

3 A. So, I didn't extract the data, but I -- I took the
4 date and I put it into the summary charts. And I worked
5 with the data.

6 Q. The actual extraction of the data from the image
7 of Dr. Bajoghli's computers you have from August 2009 was
8 done by somebody else at the FBI?

9 A. Yes.

10 Q. And, then you took the -- their work product and
11 extracted that down to the charts that you presented
12 today?

13 A. Correct.

14 Q. And, did you use Metasoft to do that?

15 A. No, we didn't need to.

16 Q. Once they had extracted, they had gone from the
17 Metasoft conversion to some other format that you could
18 use?

19 A. Yeah, the -- the data we were provided had all the
20 columns that you saw here, so there was no need to put it
21 back into Metasoft. It was all summarized in Excel.

22 Q. Okay. Now, you're aware from the extraction of
23 data from Dr. Bajoghli's practice, his computer systems
24 and so on that he has done thousands of Mohs procedures
25 over the time period, from 2008 through -- through 2012,

1 right?

2 A. Yes, that's correct.

3 Q. And, that he has reviewed thousands of frozen
4 section slides, billed for review thousands of frozen
5 section slides from his practice during that time period?

6 A. I wouldn't say thousands, plural, but yes. There
7 were --

8 Q. About 1,800 or so?

9 A. No, less than that, I think.

10 Q. Aren't you aware that 1,800 slides were billed
11 from his practice during this time period?

12 A. Um, what -- the data that I reviewed from
13 January 1st, 2009, to I believe August 9th, when we
14 seized -- when we took possession of those computers, I
15 think the number was closer to 13 or 1,400. But, that's
16 the ballpark, Mr. White.

17 Q. And that's -- but that's from 2009. So you didn't
18 include 2008 data in that?

19 A. We did not.

20 Q. But, there were another -- large lump of frozen
21 sections that were done in 2008 as well?

22 A. We didn't look at the 2008.

23 MR. NATHANSON: I object to relevance grounds
24 prior to 2009.

25 MR. WHITE: His practice, I think is relevant

1 and it's something he reviewed.

2 THE COURT: All right. Sustained the
3 objection.

4 BY MR. WHITE:

5 Q. Now, you're aware as well that he did, between
6 January 2008 and April 2012, over 5,000 first stage mask
7 and hands Mohs procedures duration that time period;
8 isn't that correct?

9 MR. NATHANSON: Your Honor, same objection,
10 relevance grounds prior to 2009.

11 THE COURT: Which timeframe are you focused
12 on, Mr. White?

13 MR. WHITE: I'm focused on the timeframe,
14 January 2008 through April 2012. I can -- I can explain
15 to the Court maybe easier at sidebar why that period is
16 relevant.

17 THE COURT: Okay.

18 MR. WHITE: Thank you.

19 (Thereupon, the following side-bar conference
20 was had.)

21 MR. WHITE: Your Honor, normally I would
22 limit my questions to the time period covered by the
23 indicted conduct, but the affidavit that he submitted in
24 support of search warrants actually references that time
25 period. So, I know he has done the analysis for that

1 time period of the number of procedures. I don't know if
2 he's done other analyses, but I know what numbers he's
3 done during that time period, it covers the time period.

4 THE COURT: You said 2008 to 2012?

5 MR. WHITE: 2008 through -- actually, his
6 numbers were 2008 through April 2012.

7 THE COURT: Okay.

8 MR. WHITE: And the point is, I want to get
9 into evidence, he knows the scope of the defendant's
10 practice. So that's why I'm focused on that time period.

11 THE COURT: Okay.

12 MR. NATHANSON: Your Honor, I'm not sure the
13 dates in the search warrant are relevant, because
14 obviously, whatever is in the search warrant was for
15 purposes of obtaining a search warrant.

16 We're now focused on a specific time period
17 in the indictment. We don't have any objection to the
18 scope of the practice during the charged time period.
19 Once we start getting to other time periods, this could
20 go on for quite a while and may have to bring in
21 evidence --

22 THE COURT: Well --

23 MR. NATHANSON: -- of additional time periods
24 as well.

25 THE COURT: Forty-three counts, right --

1 MR. NATHANSON: Yes.

2 THE COURT: -- out of 1,400 patients. I'm
3 just trying to make sure I understand what was charged.

4 MR. NATHANSON: Yep.

5 THE COURT: So, I think it is relevant.
6 Objection overruled. I'm sorry. Come back one second.

7 I will sit all day Thursday. You were told I
8 wouldn't sit all day Thursday, and today I have to leave
9 at 12:30 for lunch with the judges at the judges'
10 meeting. So we will sit all day Thursday.

11 MR. WHITE: Coming back at 2 today?

12 THE COURT: I think the meeting is only an
13 hour.

14 MR. WHITE: I was just trying.

15 THE COURT: 12:30 to 1 Thursday.

16 MR. NATHANSON: So, lunch today --

17 THE COURT: 12:30 to 1:30, and we sit all day
18 Thursday, normal schedule.

19 MR. NATHANSON: And tomorrow is all day?

20 THE COURT: Yeah, tomorrow is Wednesday.

21 MR. NATHANSON: Yeah. We're fine.

22 (THEREUPON, side-bar conference was
23 concluded.)

24 THE COURT: You may proceed.

25 MR. WHITE: Thank you.

1 BY MR. WHITE:

2 Q. So, you did a calculation at one point of the
3 number of procedures that Dr. Bajoghli had billed for
4 between January 2008 and April 2012. Do you remember
5 that?

6 A. Yeah, I do.

7 Q. And, you remember that he had done more than 5,000
8 first stage what's been called during this trial mask and
9 ears procedures of Mohs, correct?

10 A. I think that's correct. Without refreshing my
11 memory, I wouldn't want to say, but I believe that's
12 correct.

13 Q. If you need to, I can give you a document that
14 will. Just let me know.

15 A. Okay.

16 Q. You also found that he had done 1,400 or so what
17 you might call trunk, arms and legs Mohs procedures
18 during this time period?

19 A. Again, it sounds about right.

20 Q. Okay. As -- and so that would be about 6,500
21 total Mohs procedures in that four-plus year period,
22 right?

23 A. Those numbers add up.

24 Q. So, during the time period relevant to this
25 indictment, he was doing about 1,500 Mohs procedures a

1 year, right?

2 A. Yeah, I'd say that.

3 Q. And, you're also aware that during that time
4 period, 2008 through April 2012, he billed 11,000 surgery
5 units; isn't that true?

6 A. What are you defining as a surgery unit?

7 Q. Well, I can -- you actually filed an affidavit in
8 this court at one point regarding how many -- in part,
9 among other things, how many surgery units Dr. Bajoghli
10 had done; isn't that right?

11 A. I filed an affidavit. I don't know if it said
12 surgery units. I'd want to refresh my memory on that.

13 Q. Okay. I'm happy to get that for you.

14 What's our next one? 162 -- 163.

15 I'm going to show you what's marked as 163
16 defendant's exhibit. This is not to be introduced, just
17 to refresh recollection.

18 MR. WHITE: Let me make sure that I've tabbed
19 the right paragraph, Your Honor. Give me a moment.

20 Thank you, sir.

21 A. Would you like me to flip to the tab?

22 Q. Yes, actually I have tabbed, I think, the
23 paragraph that talks about the number of Mohs procedures
24 and surgery units, Mohs surgery units. Do you see that
25 one? Did I get the right one?

1 A. Paragraph 30?

2 Q. Well, you take a look at it. It's your affidavit.

3 A. Here we are, yep.

4 Q. So, in that affidavit you filed -- and again, this
5 was a while ago, so you're not remembering the exact
6 number, it's not surprising. But that affidavit says
7 that in that time period, January 2008 through
8 April 2012, he did 569 of the first stage Mohs procedures
9 on the hands and the face, right?

10 A. Did you just say 569?

11 Q. I probably did, I meant 5,069?

12 A. That's correct.

13 Q. And that's what your research at that time showed
14 you from the records that you had?

15 A. Yes.

16 Q. And, he also had done 1,400 or so trunk
17 procedures, right?

18 A. Yes, that's right.

19 Q. So, you get the total of 6,500 Mohs procedures in
20 just over four years?

21 A. Yes, 64, 69.

22 Q. 64, 69?

23 A. At least.

24 Q. And then, it also -- that affidavit also shows
25 that you compiled the number of total surgery units that

1 he had done during that time period, right?

2 A. Yes.

3 Q. And, that would include second stages of Mohs and
4 other surgical procedures?

5 A. Yes, there we are, thank you, yes.

6 Q. So, there were over 11,000 total surgery units
7 during that time period that he billed?

8 A. Yes.

9 Q. So, 2,500 or so a year surgery units that he was
10 billing at the time, right?

11 A. Yeah, 2,500.

12 Q. And, of the -- and of those, there are 17
13 surgeries that are at issue in this case, that are
14 charged in this case; is that correct?

15 A. No.

16 Q. There are 17 Mohs -- there are more than 17 Mohs
17 surgeries charged in this case?

18 A. If we're talking units, it's larger than that,
19 because some of those patients had multiple stages, which
20 if the first stage wasn't needed, the second stage
21 definitely wasn't needed.

22 Q. Fair enough, but under 20, under 25, at least?

23 A. Yeah, under 25.

24 Q. Under 25 total procedures, right?

25 A. Yes.

1 Q. And out of the -- at that time, 6,500 Mohs
2 procedures that he had done in four-plus years, there
3 were only 17 Mohs procedures, first stage Mohs procedures
4 that are charged here; is that right?

5 A. I would amend that comment by saying that these
6 numbers are from October 2006 to April of 2012. A
7 relevant time period is January 1st, 2009, I believe,
8 or -- to 2009, is the relevant time period. So there's
9 two and a half years of surgery units included in that
10 number --

11 Q. Well --

12 A. -- wouldn't be --

13 Q. To be clear, it's not up to you to determine what
14 the relevant time period is for purposes of this case, is
15 it?

16 A. No, it's not.

17 Q. So, I'm just talking about the time period that
18 you were looking at at that time, right?

19 A. Yes, but, and my only point with that we're
20 talking about overlapping time periods --

21 Q. Sure.

22 A. -- that aren't necessarily concurrent, so I --

23 Q. And they would be -- and frankly, I think you
24 would admit that August 2008 through April 2012, doesn't
25 include all the ones that are relevant because April

1 through August he was still doing more procedures?

2 A. That's correct.

3 Q. So probably another 500 or so Mohs procedures
4 during that time period?

5 A. Based on that rate, yes.

6 Q. Okay. And out of all of those procedures, 6,500,
7 7,000 procedures, 17 are the ones charged here, correct?

8 A. Again, it's larger than that number. I think we
9 agreed on at least 25, but, yes.

10 Q. No, we agreed on 25 as to the number of surgery
11 units. That's 25 out of 11,000 surgery units?

12 A. Yes, I'm sorry.

13 Q. Twenty-five out of 11,000 surgery units or
14 thereabouts are charged here. And 17 out of 6,500 Mohs
15 procedures are charged here, correct?

16 A. Seventeen out of 6,500 Mohs procedures, yes.

17 Q. Okay. And to be fair, the number is actually
18 higher than 6,500, because the data that you compiled
19 cuts off at April of 2012 and doesn't go through August
20 as the procedures do, correct?

21 A. Yes, but if we're going to do that, then I guess
22 I'd say that there's actually 89 that we're looking at
23 based on the chart that we think were unnecessary Mohs
24 surgery. Seventeen have been charged, but 89 have been
25 presented.

1 Q. Okay. So, use that number if you prefer. So, 89
2 out of 7,000 Mohs procedures are the ones that the
3 government thinks are relevant here, right?

4 A. Um, can we talk about that 7,000 number or you
5 want to leave that for later?

6 Q. No, I think that 7,000 number was your number. It
7 was 6,500 between January 2008 and April 2012, right?

8 A. Yes, that's correct.

9 Q. And probably another 500 or thereabouts between
10 April and August, 2012?

11 A. Our universe, though, consisted of --

12 Q. You can answer that question.

13 A. I'm sorry, go ahead.

14 Q. There were 500 more from April 2012 to
15 August 2012?

16 A. There were 500, that's correct.

17 Q. That's 7,000, right?

18 A. Yes, absolutely.

19 Q. Okay. Now, you mentioned that you have reviewed a
20 lot of -- actually, let me ask you another question.

21 A. Sure.

22 Q. I'm going to show you what's been marked but not
23 introduced as Defendant's Exhibit is 104-B with the
24 assistance of the court security officer.

25 Thank you.

1 Do you see that chart, Special Agent Palian?

2 A. I do.

3 Q. You've seen that chart before, correct?

4 A. Yes, I have.

5 Q. And that was a chart that we put together from
6 Metasoft data for certain codes for 2009 through 2012
7 from Dr. Bajoghli's practice?

8 A. It is Metasoft data, yes.

9 Q. Okay. Are the numbers that -- were you asked to
10 look at the numbers on this chart?

11 A. I don't know if I was asked, but I did.

12 Q. You did. So you looked at the numbers on this
13 chart?

14 A. Yes.

15 Q. Are they right?

16 A. No.

17 Q. What's wrong with them?

18 A. So, first, let me just address that in a couple of
19 ways. First there's numbers I couldn't confirm because I
20 believe the 2012 total includes August to December of
21 2012 which I wasn't able to confirm since we didn't have
22 that data.

23 Q. Okay.

24 A. But, second, the permanent section biopsies were
25 not all performed by Dr. Bajoghli. Approximately

1 30 percent of these were, I believe. So, I don't know
2 if --

3 Q. That number, is that an accurate number for the
4 practice, though, for that?

5 A. That's an accurate number for the practice, yes.

6 Q. Okay. So that's an accurate number for the
7 practice and you couldn't --

8 A. Based on what I can tell from the data that I
9 have, yes, it's an accurate number.

10 Q. And it's fair you couldn't necessarily tell
11 whether -- whether it was Dr. Bajoghli or somebody else
12 in the practice who had done that permanent section
13 analysis?

14 A. No, I can't determine that.

15 Q. You can't determine that. Not all of these were
16 Dr. Bajoghli?

17 A. Not all of these were Dr. Bajoghli.

18 Q. Fair enough. All of the frozen section were Dr.
19 Bajoghli's, though?

20 A. Yes.

21 Q. And are those frozen section numbers, right?

22 A. Again, as much as I can tell, they're very close
23 if not correct.

24 Q. Okay. So, according to the numbers that you
25 analyzed from 2009 through 2012, there were over 1,800

1 frozen sections done by Dr. Bajoghli's practice during
2 that time period, correct?

3 A. Not based on the numbers that I have.

4 Q. So the far right column -- and, let me just make
5 sure I've got this right.

6 A. And only because the 2012 number --

7 MR. NATHANSON: I'm sorry, I'm going to
8 object. This isn't in evidence. It's a summary chart
9 that the defense created. If they want to testify, it
10 should be in evidence. It should come in through a
11 sponsoring witness.

12 MR. WHITE: I'm trying to get him to sponsor
13 it right now. He checked the numbers. I'm trying to
14 find out which ones he agrees with.

15 THE COURT: All right. It looks like he's
16 trying to lay a foundation. Objection overruled.

17 BY MR. WHITE:

18 Q. All right. So, let's just start with 2009, you
19 did have full data for 2009, right?

20 A. Yes, I did.

21 Q. And the 2009 number for Mohs surgery was 890. Was
22 that accurate?

23 A. Very close.

24 Q. Very close, okay.

25 A. I wouldn't call it accurate, but I'd call it close

1 enough.

2 Q. How close is close enough?

3 A. I --

4 Q. A couple or something like that?

5 A. I can't rate on your chart.

6 Q. I'm just wondering what you mean by close enough.

7 A. You know, I just don't remember the exact number.

8 I can't -- I -- I wouldn't have submitted this as mine,

9 but, I mean, if you want to say it's good, that's fine.

10 Q. That's fine, good enough.

11 THE COURT: If you want to say it's good,

12 it's fine. Is that what you just said?

13 THE WITNESS: I don't have a problem with

14 this necessarily.

15 THE COURT: Okay, next question.

16 BY MR. WHITE:

17 Q. The next column over in 2009 is both types of
18 biopsies. It says 1,761. Were you able to confirm that
19 number?

20 A. For the practice, yes.

21 Q. For the practice?

22 A. Again, close. I'm not -- I don't think these are
23 the exact numbers.

24 Q. Fair enough. So, and both types of biopsies is
25 frozen section and permanent section, right?

1 A. Both types of biopsies is frozen section and
2 permanent section, yes.

3 Q. Let's maybe just focus on the frozen section
4 biopsies. Maybe we can avoid part of this problem. 338
5 frozen section biopsies for Dr. Bajoghli in 2009. Is
6 that number accurate?

7 A. 338 frozen section biopsies for Dr. Bajoghli in
8 2009, was that your question?

9 Q. Yes.

10 A. Yes, I think I stated I think that's close, but I
11 don't think that's the exact number.

12 Q. Okay.

13 MR. WHITE: So the -- Your Honor, if I could
14 ask for Court's indulgence to set up the easel, please?

15 THE COURT: All right.

16 MR. WHITE: Thank you.

17 May I approach?

18 THE COURT: Yes, uh-huh.

19 THE WITNESS: Mr. White, would you be able to
20 adjust this so I can see it, too ?

21 MR. WHITE: Of course.

22 THE WITNESS: Thank you.

23 MR. WHITE: This is the best I can do is
24 green highlighter, but that should cover it.

25 Q. So, for 2009, and we're just going to do Mohs and

1 frozen sections. Fair enough? You following what I'm
2 doing here --

3 A. Yes.

4 Q. So, 2009 total Mohs surgery and these would all be
5 by Dr. Bajoghli, correct?

6 A. Yes, in 2009, we don't have any evidence that he
7 did -- he performed -- that anyone else performed Mohs
8 surgery.

9 Q. As a matter of fact, during the entire time
10 period, you don't have any evidence that anyone else
11 performed Mohs surgery other than Dr. Bajoghli and his
12 practice, do you?

13 A. No, that's not true.

14 THE COURT: Mr. White, hold on. We got black
15 markers here.

16 MR. WHITE: Thank you. Let me start over.

17 A. I'm sorry, the last answer to my question was no,
18 that's not true.

19 Q. Okay. So, for 2009, there were 890 Mohs
20 procedures billed by Dr. Bajoghli's practice or
21 thereabouts, correct?

22 A. Thereabouts.

23 Q. And there were 338 frozen section biopsies,
24 correct?

25 A. Again, that's close, I think.

1 Q. Close, okay. So -- and you're aware that of these
2 frozen section biopsies not all of those ended up in
3 Mohs, correct?

4 A. That's correct.

5 Q. And, the other Mohs procedures would be filled in
6 by permanent section biopsy analyses that were done by
7 the practice, right, or were transmitted to the practice?

8 A. Yes.

9 Q. Referrals to the practice with an existing biopsy
10 result --

11 A. Yes.

12 Q. -- for example? Okay.

13 2010, 2010, I have 1,034 Mohs surgeries by Dr.
14 Bajoghli's practice. Is that right or close?

15 A. I think it's close.

16 Q. Okay. And, I have 454 frozen section biopsies,
17 correct?

18 A. Again, close.

19 Q. Okay. So, again, not all of these frozen section
20 biopsies ended up in Mohs procedures, right?

21 A. Yes.

22 Q. As a matter of fact, generally about half of them
23 don't end up in Mohs procedures from your analysis?

24 A. I don't know that number.

25 Q. Okay. But a significant number of them do not end

1 up in Mohs procedures or have you never done that
2 analysis?

3 A. Not sure.

4 Q. Okay. But, obviously, there are a number of Mohs
5 procedures that have been done based on permanent
6 sections biopsies other than just these frozen sections,
7 correct?

8 A. I'm sorry. Could you ask that question one more
9 time.

10 Q. Sure. It's -- 454 is a lot less than 1,034?

11 A. 454 is less than a thousand.

12 Q. So the point is there are permanent section
13 biopsies that are being used for probably -- for most of
14 the Mohs that are being done in 2010, correct?

15 A. I don't know if it's Mohs, but there is a
16 significant portion we can tell that.

17 Q. It's got to be at least 600?

18 A. Got to be at least 600.

19 Q. And that would be most, right?

20 A. It would be greater than half, yes.

21 Q. And it's actually -- you know it to be a lot
22 larger than 600 because a number of these frozen section
23 biopsies done by Dr. Bajoghli did not end up in Mohs?

24 A. That's correct.

25 Q. 2011, we have 1,021 Mohs surgeries, again,

1 substantially accurate?

2 A. Close.

3 Q. Okay. And, frozen sections biopsies by Dr.
4 Bajoghli 573?

5 A. Close.

6 Q. Again, close, okay. All right. So, again, the
7 same not all of these frozen section biopsies in 2011
8 ended up in Mohs procedures, right?

9 A. Correct.

10 Q. And there were a number, again the majority of
11 these Mohs procedures were as a result of permanent
12 sections biopsies, correct?

13 A. Yes.

14 Q. Okay. In 2012, and this may be where your data is
15 different than mine. In 2012, you only have data through
16 August; is that right?

17 A. Early August.

18 Q. Early August. And our data, I think you were
19 saying must go through the end of the year because our
20 numbers are different there?

21 A. That's right.

22 Q. Do you recall what your number was for through
23 August?

24 A. No, I don't.

25 Q. All right. So, I had 1,332 for the year. So is

1 it fair to say that two thirds of those are from the
2 pre-August time period?

3 A. I wouldn't be able to say.

4 Q. So --

5 A. I wouldn't feel comfortable.

6 Q. You wouldn't feel comfortable saying. So you
7 looked at this before, but you don't remember what the
8 number is here, right? And we've got 1,332 but you
9 couldn't confirm that because your data cuts off in
10 August?

11 A. That's correct.

12 Q. So, there's a number in here that is some portion
13 of -- I'll put slash 1332 to indicate that some portion
14 of 1332 was the pre-August time period that you looked
15 at, right?

16 A. Okay.

17 Q. And the practice remained fairly consistent in
18 terms of the Mohs practice ramping up over this time
19 period, right?

20 A. Yeah. I'd agree with that.

21 Q. And if it were two thirds of it, that would be 900
22 or so. Is my math decent on that?

23 A. I mean -- two thirds is -- yeah, 900 of 1300.

24 Q. Fair enough, and I'll put 900 question mark.

25 A. Can you put ish, that would make me feel better.

1 Q. I'd be happy to put 900ish.

2 A. Thank you.

3 Q. As a matter of fact, I'll cross out the other one.
4 I want to use your testimony. So, 900ish and then I had
5 one -- 448 frozen section biopsies for 2012. Is that
6 number right, based on what you saw through August?

7 A. Again, I can't say what --

8 Q. Okay. So, if it --

9 A. I don't know if Dr. Bajoghli's practice is very
10 seasonal.

11 Q. Fair enough. And you don't necessarily know what
12 he was doing between August and the end of the year?

13 A. Correct.

14 Q. So, if it was two thirds of that number, we're
15 probably looking at 300ish here. Is that fair to say?
16 Would that be your word for it?

17 A. I don't know. You can put ish.

18 Q. Okay, that's fine. Fair enough.

19 Now, doing the math on this and I'm going to have
20 to round a little bit. I can't do it on the fly, but
21 we're looking at about 4,000 Mohs procedures from the
22 2009 to the 2012 time period that you said is relevant
23 here, right?

24 A. Yeah, okay.

25 Q. Okay. That's through, again that's through August

1 2012, right? And frozen section --

2 A. Can we put that down for the 2012 part that it
3 goes through August? Can we write that there?

4 Q. Sure, yeah. Does that take care of it?

5 A. Sure.

6 Q. Okay. So this is full year, 2009, full year 2010,
7 full year 2011, two thirds of 2012?

8 A. Correct.

9 Q. And then on this side, frozen section slides there
10 are -- do some quick math here, about 1,700.

11 A. Yeah.

12 Q. Okay. All right. So, during the time period that
13 you've identified as relevant here, we're looking at
14 4,000 Mohs procedures done by Dr. Bajoghli and 1,700
15 frozen section -- frozen sections reviewed by Dr.
16 Bajoghli, correct?

17 A. According to that chart.

18 Q. Right. And, you were involved in the process that
19 involves getting frozen section slides to Dr. Lang who
20 testified in this case?

21 A. That's right.

22 Q. And Pearson Lang was the Mohs surgeon from, I
23 believe, Charleston, South Carolina?

24 A. Yes.

25 Q. And you brought him 1,287 frozen section slides to

1 review, initially, correct?

2 A. That number sounds really close, yes.

3 Q. You didn't bring him all 1,700 that Dr. Bajoghli
4 had reviewed between 2009 and August of 2012, did you?

5 A. No, we didn't.

6 Q. Why not?

7 A. We brought everything that we had access to with
8 the exception of one box from Stafford in 2012.

9 Q. Okay, so --

10 A. So, there was maybe -- I'd hate to guess, but 40
11 or 50 frozen sections in there that we didn't bring him.

12 Q. So some of the 1,700 you didn't have access to?

13 A. We didn't have access to another portion of the
14 1,700. It appeared because of the way the slide was made
15 that they were all locked together. So there were 20 or
16 30 or 50 slides that were kind of fused together. So we
17 didn't have access to the slides in those big bulk.

18 Q. The way they had been stored or whatever kind of
19 caused them to kind of fuse together?

20 A. Uh-huh.

21 Q. Couldn't do individual -- so you sent him a
22 portion of these, the portion that you had access to and
23 thought was usable?

24 A. We sent him everything that we thought we had
25 access to. I mean, with the exception of that one box

1 from Stafford, we sent him everything we had access to.

2 Q. Fair enough. But the relevant universe of slides
3 that Dr. Bajoghli had reviewed, you would agree is this
4 1,700 from January 2009 through August 2012?

5 A. The only thing that I would -- I would possibly
6 disagree with this number and I haven't checked this is
7 the denied claims. If there was a denied frozen section,
8 it may show up as in your number here.

9 Q. Fair enough. So there could be some that were
10 denied where he had done a frozen section, but the bill
11 was denied, so that --

12 A. So it was submitted twice and it's double counted
13 here.

14 Q. So, there could be a little bit of double
15 counting?

16 A. There's some of that.

17 Q. Not a significant amount of double counting in
18 these numbers from what you've seen, right?

19 A. I'm not sure. I couldn't say.

20 Q. Okay, fair enough.

21 But, you would agree with me that the relevant
22 universe of frozen section slides is some form of this
23 1,700 frozen section slides that Dr. Bajoghli reviewed
24 between 2009 and August 2012. Is that fair?

25 A. Again, I'd call the relevant universe closer to

1 1,200, because that's what we analyzed. I think your
2 1,287 number is right. That's what I'd call a relevant
3 universe.

4 Q. That's what you choose to send to Dr. Lang?

5 A. That's what we had access to.

6 Q. That's what you had access to. Other than the box
7 from Stafford which you chose not to send?

8 A. Correct.

9 Q. Which you did have access to.

10 A. We did have access to that.

11 Q. Fair enough. And the relevant universe of Mohs
12 procedures that was done was 4,000 or thereabout during
13 this time period, right?

14 A. Thereabout.

15 Q. And, out of the 4,000 Mohs procedures, 17 were
16 charged here, and 88 or 89 are alleged to have been
17 unnecessary, right?

18 A. Correct.

19 Q. So, you're looking at about just over two percent
20 of the Mohs procedures that he did during this time
21 period, that 89 is a little bit over two percent of those
22 procedures, right?

23 A. That's what that math works out to be, yes.

24 Q. So, two percent of his Mohs procedures you're
25 saying were unnecessary based on the 89 that you had both

1 of your experts analyze, correct?

2 A. Well, I wouldn't -- I wouldn't characterize it as
3 two percent.

4 Q. Okay. 89 out of 4,000 are the ones that have been
5 presented here in court.

6 A. I disagree with your denominator. That's why I'm
7 saying I wouldn't call it two percent.

8 Q. Because some of those were Mohs procedures that
9 were done pursuant to permanent section slides?

10 A. Correct.

11 Q. So you think the only thing relevant is the number
12 of frozen section slides?

13 A. That's correct.

14 Q. Again, not your call as to what's relevant. My
15 question is, two percent of the Mohs procedures that he
16 did are -- represents the 89 that are here in court,
17 right?

18 A. Again, I can't agree with that two percent if I
19 don't agree with the denominator. I can agree with your
20 math.

21 Q. How about my math, 89 out of 4,000, that's over
22 two percent?

23 A. I can agree with your math.

24 Q. 80 out of 4,000 would be exactly two percent?

25 A. Yes.

1 Q. So it's 2.2 percent to be precise?

2 A. I don't have a calculator, but it sounds by right.

3 Q. Okay. And you would -- your point is that the
4 frozen section is the right number to look at, right?

5 A. I think the frozen section is the right number to
6 look at because those are the only ones that Dr. Bajoghli
7 looked at where he was the only person to look at them.

8 Q. Okay. So, out of the 17,000, you would agree with
9 me that 17 charged here out of the 1,700, I apologize, is
10 one percent, right? Seventeen out of 1,700 is one
11 percent?

12 A. Seventeen out of 1,700 is one percent.

13 Q. Seventeen counts, 1,700, that he reviewed, one
14 percent of them have been charged here, right?

15 A. One percent have been charged, correct.

16 Q. And that number would be a little higher if you
17 include the 89 something like four percent?

18 A. I mean, I guess.

19 Q. Eighty-five?

20 A. I don't know.

21 Q. I think five percent would be 85, so --

22 A. Okay.

23 Q. So roughly five percent if you include the 89 of
24 the 1,700 or what's charged here as unnecessary Mohs
25 procedure.

1 A. One out of every 20 patients, yes.

2 Q. Okay. And that's -- I said charged here. I
3 should have said one out of -- one out of every 20 frozen
4 sections that he reviewed are ones that are included in
5 the chart. Fair enough?

6 A. I guess I shouldn't have said patients because
7 patients had multiple frozen sections, so that number may
8 be larger.

9 Q. As a matter of fact, multiple patients would come
10 in with multiple lesions that they would look at at the
11 same time?

12 A. Absolutely.

13 Q. That happened very frequently. All right.

14 MR. WHITE: Court's indulgence one moment.

15 THE WITNESS: Would you like this back,
16 Mr. White?

17 BY MR. WHITE:

18 Q. Sure if it's in your way, I'd be happy to take it.
19 Thank you.

20 I'd like to talk some about the charts that you
21 have prepared.

22 A. Okay.

23 Q. And, before we get to that, the 89 that have been
24 included that we have been talking about, those are the
25 ones about which Dr. Lang and Dr. Patterson agreed that

1 there was not cancer present from their review of the
2 slides, right?

3 A. Dr. Lang and Dr. Patterson informed us those were
4 clearcut cases and those were the ones they agreed on.
5 They didn't know they agreed on them.

6 Q. You saw Dr. Rosic testified, too?

7 A. I did see Dr. Rosic testify.

8 Q. She disagreed with the vast majority of their
9 diagnosis, correct?

10 MR. NATHANSON: Objection, Your Honor, asking
11 him to comment on other witness's testimony.

12 THE COURT: Sustained.

13 BY MR. WHITE:

14 Q. Dr. Rosic's analysis didn't have anything to do
15 with your putting together your 89 slides, right?

16 A. Yes, Dr. Rosic's testimony we didn't factor into
17 anything.

18 Q. Got it.

19 A. And we weren't aware of it.

20 Q. By the way, I think you said that they said all of
21 those were clear, all of those 89. Don't you recall Dr.
22 Lang testifying that one of the charged counts here was
23 actually cancer from the stand? Don't you remember him
24 saying that?

25 MR. NATHANSON: Your Honor, I'm going to

1 object again, and it's the witness -- it's the jury's
2 recollection of the witness that controls, not this
3 witness .

4 MR. WHITE: He volunteered a comment about
5 what they said.

6 THE COURT: All right. I sustain the
7 objection.

8 MR. WHITE: Okay.

9 BY MR. WHITE:

10 Q. Let's start with, Special Agent Palian, which was
11 the exhibit that you looking at when you talked about the
12 cryo freezes. Can you remind me what the number of that
13 was?

14 A. Stand by.

15 Q. I think it's 306. Do I have that right?

16 A. 306 is correct.

17 Q. Could you pull up 306, please.

18 A. Excuse me. I have 306.

19 Q. Can you blow up -- actually the whole text chart.
20 Okay.

21 So, this is 306 and this is what you were looking
22 at while you testified about what Dr. Bajoghli would have
23 gotten if he had done a cryo freeze on these, correct?

24 A. Correct.

25 Q. And I think he said what he would have gotten if

1 he had done a cryo freeze was something like 70 to 80 or
2 \$90 depending on the time?

3 A. Depending on the time period.

4 Q. You're not testifying that cryo freeze was the
5 appropriate thing to do for any of these lesions, are
6 you?

7 A. That's what Dr. Lang testified to.

8 Q. I want to know what you're testifying to?

9 A. I'm not a doctor. I can't testify.

10 Q. You're not a physician?

11 A. No, I'm not a physician.

12 Q. So you're not testifying --

13 A. I shouldn't say I am not a physician. Let me
14 clarify.

15 Q. You're not an MD?

16 A. No, I'm not an MD.

17 Q. And you didn't do a dermatology residency?

18 A. No, I did not.

19 Q. Did not do a pathology residency?

20 A. No.

21 Q. So, you're not qualified to read slides?

22 A. No, I'm not.

23 Q. And you're not qualified to testify as to what the
24 appropriate treatment is for any particular patient is,
25 are you?

1 A. I'm not qualified to do that.

2 Q. So you're not saying that the appropriate
3 treatment for any of these patients was a cryo freeze,
4 are you?

5 A. No.

6 Q. As a matter of fact, there are a number of
7 different treats that can be appropriate, even for a
8 benign lesion, correct?

9 A. There are -- my understanding again, I'm not a
10 dermatologist, but there's a number -- my understanding
11 is there's a number of different methods that these
12 things can be treated with.

13 Q. There can be cryo freeze, simple excisions, other
14 methods that are done, correct?

15 A. My understanding is those exist, yes.

16 Q. And if there's a simple excision, there's a wound
17 closure for that too, right?

18 A. Not always.

19 Q. Not always. It can be second intention healing
20 for that, too, correct?

21 A. Can be.

22 Q. But there can be a wound closure charge for that
23 too, right?

24 A. There can be.

25 Q. Okay. So, using the example that you talked about

1 Frederick Farber, the diagnosis I think you said by Dr.
2 Lang was that that was a wart, or at least, you probably
3 recall that. I may have that wrong. Was that Lang or
4 Patterson said it was a wart?

5 A. Lang.

6 Q. If that was removed by simple excision, there
7 would be a wound closure charge potentially for that,
8 too, correct?

9 A. Potentially but not necessarily.

10 Q. Not necessarily, okay. Now, there's one piece of
11 this I want to specifically focus you on. You've got
12 repaired paid column here and there are four instances
13 where Dr. Bajoghli didn't bill for any repair. Do you
14 see that?

15 A. Four instances, that's correct.

16 Q. Four of the 17, correct?

17 A. Yes.

18 Q. And, those as I think you testified are instances
19 where he allowed this surface wound to heal by second
20 intention healing, correct?

21 A. The patient files lead me to believe that.

22 Q. So the patient files indicate that as to Larry
23 Brooks there was no charge for a wound closure because
24 the wound was allowed to heal on itself, correct?

25 A. Yes.

1 Q. Much like if somebody had gotten a bad scrape on
2 their knee and just let it heal on its own, correct?

3 A. Correct.

4 Q. So there is no charge for a wound closure when
5 that happens, right?

6 A. There is no charge for a wound closure when that
7 happens.

8 Q. And in four of the 17 instances here where Dr.
9 Bajoghli diagnosed cancer and did Mohs surgery, he did
10 not charge for any wound closure, correct?

11 A. Correct.

12 Q. And that's pretty typical from the documents
13 you've seen throughout his practice, there are a number
14 of patients who did Mohs surgery and did not have wound
15 closure charges because of second intention healing,
16 correct?

17 A. There is a number of them. I wouldn't be
18 comfortable estimating that number, but there is a number
19 of them.

20 Q. Fair. These aren't the only four instances out of
21 the 4,000 Mohs procedures where second intention healing
22 led to no wound repair charge, are they?

23 A. Correct, they're not.

24 Q. There are lots of them, right?

25 A. I don't know if there's lots of them, but.

1 Q. It's not a very well defined term, is it?

2 A. No.

3 Q. Okay. Significant number, maybe that's better?

4 A. Again, I --

5 Q. All right. Now, you gave a diagnosis for 15 of
6 these 17 diagnosis per FS path report. Do you see that?

7 A. Yes, that's correct.

8 Q. And two of the 17 -- 15 of the 17 are cancer as
9 you understand it, and two of the 17 are benign lesions,
10 correct?

11 A. Correct.

12 Q. Let's talk about Larry Brooks for a moment. And
13 Larry Brooks, you're aware that throughout the patient
14 file for Larry Brooks, Dr. Bajoghli's contemporaneous
15 diagnosis for Larry Brooks' lesion was squamous cell
16 carcinoma, correct?

17 MR. NATHANSON: Objection, Your Honor, calls
18 for speculation. He's asking for what was in Dr.
19 Bajoghli's mind at the time, contemporaneous diagnosis.

20 MR. WHITE: I asked what was in his file.

21 THE COURT: Objection overruled.

22 BY MR. WHITE:

23 Q. You need me to repeat the question?

24 A. Please.

25 Q. In Dr. Bajoghli's file for Larry Brooks, which

1 you're very familiar with, on several occasions, and I'm
2 happy to walk you through them, the contemporaneous
3 notations in Dr. Bajoghli's file show that he diagnosed
4 that lesion as squamous cell carcinoma. Isn't that
5 correct?

6 A. There are places in the file where it's diagnosed
7 as --

8 Q. Lots of places in the file. Do you want to walk
9 through them?

10 A. Up to you.

11 Q. There's more than one, right?

12 A. There's more than one.

13 Q. The Mohs map says it's a squamous cell carcinoma,
14 correct?

15 A. I believe it does.

16 Q. And, the patient form that the MA fills out while
17 doing the service, that says it's squamous cell
18 carcinoma, too?

19 A. You're talking about the patient encounter form?

20 Q. Yes.

21 A. Yes. I believe it does.

22 Q. And the letter that he sent to another doctor that
23 says it's squamous cell carcinoma, correct?

24 A. I believe so.

25 Q. And even his operative notes that says it's a

1 squamous cell carcinoma, correct?

2 A. I'm sorry, his what notes?

3 Q. His operative notes.

4 A. Operative notes, I believe it does.

5 Q. Right. And as well, the permanent section
6 analysis -- I'm sorry, the frozen section path report
7 here talks about ruling out squamous cell carcinoma for
8 Mr. Brooks, correct?

9 A. It does speak to ruling out squamous cell
10 carcinoma, yes.

11 Q. So, if I've counted it correctly, there are at
12 least six instances in the file where the contemporaneous
13 documents indicate that Dr. Bajoghli's diagnosis was
14 squamous cell carcinoma, correct?

15 A. I didn't keep count, but if you say that is, I
16 believe you.

17 Q. Okay, at least five.

18 A. Again, I didn't keep count, but I think you said
19 five things.

20 Q. Fair enough. But on your chart, you put the
21 diagnosis was a benign lesion, an SK?

22 A. Correct, that's what's was on the frozen section.

23 Q. And you're aware that the frozen section report
24 for Larry Brooks was actually not prepared at the same
25 time as the procedure was done. You're aware of that,

1 right?

2 A. I don't know that.

3 Q. Didn't you --

4 A. I can't say when that file was created. I can say
5 when it was last modified.

6 Q. When was it last modified? I'll give you help,
7 July 27th.

8 A. That sounds right.

9 Q. Service was July 6th.

10 A. Correct.

11 Q. So the service was on July 6th. On July 10th, the
12 pathology report from Dr. Ocampo comes back that says
13 it's seborrheic keratosis, correct?

14 A. I think that was the date.

15 Q. The document that's been introduced in court as
16 his frozen section path report 2B, that says it's
17 seborrheic keratosis, correct?

18 A. Yes, the frozen section said that.

19 Q. And that document was not created until after Dr.
20 Ocampo's external pathology report came back and
21 disagreed with Dr. Bajoghli's diagnosis of squamous cell
22 carcinoma, correct?

23 A. Again you're using the word "created". The
24 metadata doesn't say when it was created. It says when
25 it was modified.

1 Q. Fair enough. The version that was introduced in
2 court was last modified on July 27th.

3 A. I don't think that's correct. The version that
4 was introduced in court was a paper document. There's no
5 metadata that goes with paper documents.

6 Q. But you've looked at the version that's connected
7 to the metadata that was last modified on July 27th,
8 correct?

9 A. I'm sorry. Could you ask that question again.

10 Q. You've looked at the version that existed in their
11 electronic files that was last modified on July 27th?

12 A. Yes, I have.

13 Q. It is identical to the one the government
14 introduced in court, isn't it?

15 A. Yes, it is.

16 Q. So there was no change on July 27th -- so the
17 version that existed on July 27th on the server, is the
18 same as the paper version that was introduced in court,
19 correct?

20 A. It appears to be the same. However, I will say
21 that the metadata would show that it changed if somebody
22 had put a space in there, right. If somebody adds --
23 hits the space bar once, it's going to show it was
24 modified on that date. They would appear to be the same
25 document, the paper and the electronic. I wouldn't know

1 the difference.

2 Q. Did you see a space difference between the one
3 that was in court and the one that was in the -- that was
4 stored on the system?

5 A. If it was at the end of a sentence, you wouldn't
6 see it.

7 Q. Okay. So you're just -- you're hypothesizing that
8 somebody put a space into a report that was already in a
9 file --

10 A. I'm not hypothesizing anything. I'm telling you
11 why you can't necessarily draw that conclusion. I'm not
12 saying that that's what happened. I'm saying why your
13 conclusion isn't necessarily true.

14 Q. That's a ludicrous conclusion, though, isn't it,
15 that somebody put in a space you can't tell?

16 A. If you open up a document --

17 THE COURT: Excuse me. Excuse me. The way
18 this works is one question, one answer.

19 We're going to break now.

20 Ladies and gentlemen, please listen to me
21 carefully. I have a slight change in the schedule. So,
22 today, we're going to break now for 15 minutes. I'm
23 going to break for lunch today at 12:30, from 12:30 to
24 1:30 because I have a judges' meeting. All the judges
25 are meeting at 12:30 today.

1 We will sit all day on Thursday as the normal
2 schedule, 10 to 5 on Thursday. So to be clear, we're
3 going to break now 15 minutes. We're going to come and
4 we'll break for 12:30 for lunch, from 12:30 to 1:30
5 because I have a judges' meeting. We'll sit all day on
6 Thursday. Thank you.

7 A JUROR: What about Wednesday?

8 THE COURT: Wednesday, too, absolutely all
9 day Wednesday, too. Thank you for saying that.

10 All right.

11 (Court recessed at 11:31 a.m. and reconvened
12 at 11:48 a.m.)

13 THE COURT: You can bring the jury out,
14 Mr. Toliver. Thank you.

15 You may be seated.

16 All right, counsel, you may proceed.

17 MR. WHITE: Thank you, Your Honor.

18 CROSS-EXAMINATION CONTINUED

19 BY MR. WHITE:

20 Q. Special Agent Palian, when we left off, we were
21 talking about Government's Exhibit 306.

22 A. 306, yes, sir.

23 Q. And the one I was specifically focused on was the
24 Larry B which was the Larry Brooks line on two?

25 A. Yes, we were talking about.

1 Q. And the number of times -- I think we were up to
2 the point where you were aware that the metadata for the
3 document which is facially identical to the one that was
4 entered in court shows it was last modified on July 27th
5 after Dr. Ocampo's external pathology report came out
6 listing his seborrheic keratosis diagnosis.

7 Did I phrase it correctly?

8 A. You did phrase it correctly.

9 Q. So that's what it shows?

10 A. It does show that.

11 Q. And your point at the end was if somebody had gone
12 into the document -- if somebody had typed in seborrheic
13 keratosis, despite everything else in the medical file as
14 Dr. Bajoghli's diagnosis on July 6th, if they went in and
15 just put a space in on July 27th, then that would
16 indicate the last modified date was July 27th, right?

17 A. That or if somebody had taken a word out and then
18 put it back in and saved it, the documents would still
19 again look the same, but it would show as modified.

20 Q. You know of absolutely no evidence that that
21 actually happened?

22 A. No, I don't have any evidence of that.

23 Q. As a matter of fact, the normal way to look at
24 this, you as an investigator would say, that was done
25 on -- the report was done after Dr. Ocampo's analysis

1 came back, given the forensic data, correct?

2 A. No, I wouldn't necessarily look at it that way.

3 Q. So you would say as an investigator that it's
4 possible somebody put a space in and that's what happened
5 on that --

6 A. I would say inconclusive. I can't tell.

7 Q. You would say it's inconclusive.

8 But throughout Dr. Bajoghli's medical file, it is
9 not inconclusive that his diagnosis, other than this one
10 document created after Dr. Ocampo's different diagnosis
11 came back, Dr. Bajoghli's diagnosis was clearly squamous
12 cell carcinoma from every document in that file, correct?

13 A. Every other document states squamous cell
14 carcinoma, that's correct.

15 Q. But you put SK on this report, right?

16 A. Because that's what was on the frozen section,
17 that's correct.

18 Q. A prior version of this produced to us had that as
19 Dr. Bajoghli's actual diagnosis, didn't it?

20 MR. NATHANSON: Objection, Your Honor,
21 relevance.

22 THE COURT: Sustained.

23 BY MR. WHITE:

24 Q. Now, let's look at Janet Buccola. That's the
25 other instance on this, Janet B, Count 12. Do you see

1 that one?

2 A. Yes, I see that.

3 Q. That's the other instance on this chart where a
4 noncancer diagnosis is listed on your chart, correct?

5 A. Correct.

6 Q. Exact same fact pattern here where throughout
7 Janet Buccola's file, Dr. Bajoghli's Mohs map has a
8 cancer diagnosis, correct?

9 A. Dr. Bajoghli's Mohs map has a cancer diagnosis.

10 Q. And Dr. Bajoghli's operative notes has a cancer
11 diagnosis, correct?

12 A. I believe that's true. I haven't reviewed the
13 report recently, but I think that's true.

14 Q. And Dr. Bajoghli's letter to the referring
15 physician has a cancer diagnosis, correct?

16 A. I believe it does.

17 Q. And Dr. Bajoghli's patient encounter form has a
18 cancer diagnosis, correct?

19 A. I think so. I'm not positive.

20 Q. And, in this case as well, there was an external
21 pathology that came back after the Mohs was done that had
22 a different reading on the slide from Dr. Bajoghli,
23 correct?

24 A. It did have a different reading.

25 Q. And that reading was SK, right?

1 A. Yes.

2 Q. And in this case as well the metadata for the
3 document that has been introduced as an SK, shows that it
4 was created after the external pathology report came
5 back; isn't that true?

6 A. I don't know that. I haven't seen that metadata.

7 Q. So you haven't looked at the metadata for the
8 other frozen section path reports stored on the system?

9 A. No, I have not.

10 Q. You weren't curious to see whether the last change
11 date for Janet Buccola was, like with Larry Brooks, the
12 last modified date was after the external pathology
13 report came in? You weren't curious about that?

14 A. No, because the metadata is inconclusive a lot of
15 the times.

16 Q. Because they could have put a space in at the end
17 and you wouldn't be able to know.

18 A. It could have made any one of a number of
19 modifications to that that wouldn't show up on the
20 document that's in the file.

21 Q. Let's talk about the number of modifications. One
22 is putting a space in at the end of a line. You wouldn't
23 notice that?

24 A. I wouldn't notice that.

25 Q. Another is deleting a word and typing it right

1 back in and you wouldn't know that, right?

2 A. Correct, any modification that keeps the two
3 documents looking the same, you wouldn't notice that, but
4 the metadata would show it was changed.

5 Q. Okay. What other modifications might do that?

6 A. I'm not a computer expert, but -- I'm not sure.

7 Q. You don't know of any reason to think that
8 somebody deleted a word after the fact and typed it back
9 in, do you?

10 A. No, I don't have any reason to think that. I'm
11 just saying it's inconclusive.

12 Q. You don't have any reason to think that anybody
13 added a space on to a document after the external
14 pathology report came back, do you?

15 A. Nope.

16 Q. The normal explanation is that's actually when the
17 document was created, isn't it?

18 A. I don't know when this document was created. I
19 can't tell that.

20 Q. But you know it was modified after the external
21 pathology came back with the seborrheic keratosis
22 diagnosis, correct?

23 A. For Larry Brooks we know that.

24 Q. And for Janet Buccola, you never checked?

25 A. We never looked. There's no reason to.

1 Q. And as a matter of fact, did you look at the
2 metadata for all of these and see that for almost all of
3 them, they were actually last modified in the system well
4 after the procedure, did you know that?

5 A. I didn't have that information because I didn't
6 look at that.

7 Q. So you didn't look to see when these were created
8 other than the Brooks report?

9 A. We relied on the paper file. We didn't rely on
10 the electronic.

11 Q. But the FBI actually looked into the Brooks -- the
12 Brooks frozen section report, correct?

13 A. We did.

14 Q. And, the metadata on that one indicated it was
15 last modified on July 27th, 21 days after the procedure
16 had been done by Dr. Bajoghli, correct?

17 A. Yes, 21 days.

18 Q. And the way it was modified to is visually
19 identical to what's been presented in court, correct?

20 A. Correct.

21 Q. All right.

22 MR. WHITE: Now, could you bring up 304,
23 please. And if you could -- I don't know. This needs to
24 be much more readable for this purpose, but maybe if you
25 could blow up the first three lines, please. I'm not

1 sure that made it a whole lot more readable, but let's
2 take a shot with it.

3 Q. Line one lists a diagnostic code 173.3, correct?

4 A. Yes, it does.

5 Q. And the description next to it, that's just the
6 description that goes with that diagnostic code, correct?

7 A. Yes.

8 Q. And you'll notice that line three has the same
9 173.3 code, correct?

10 A. Yes.

11 Q. So it has the exact same description next to it,
12 correct?

13 A. It does.

14 Q. So, at that time, whether it was a squamous cell
15 carcinoma or a basal cell carcinoma --

16 A. You're correct.

17 Q. -- of the skin or other part of the face, it got
18 the same code, correct?

19 A. Yes.

20 Q. And, the code is what dictates what gets billed
21 and what gets paid, correct?

22 A. Correct.

23 Q. So, at this time, whether it was a squamous cell
24 carcinoma or a basal cell carcinoma, it didn't matter to
25 the insurance carriers, because they had the same code

1 for both of them, right?

2 A. The ICD9 code was the same for both at that time,
3 yes.

4 Q. So whether it was squamous cell or basal cell,
5 gets the same code, gets billed and paid the same way?

6 A. Yes, you put the same ICD9 code down, that's
7 right.

8 Q. And the amounts that are paid for the Mohs
9 surgeries and the wound closures and everything else,
10 those are all set by, take them maybe one at a time,
11 Medicare sets the amount it will pay for a Mohs procedure
12 at a particular time in a particular place or a wound
13 closure in a particular time and a particular place,
14 correct?

15 A. Each insurance carriers sets their own
16 reimbursement rates.

17 Q. So Medicare would have one and maybe Blue Cross
18 Blue Shield would have a different rate and Anthem a
19 different rate and Tricare may even have a different
20 rate?

21 A. Yes.

22 Q. Okay. The amounts that were paid here in the
23 exhibits that you showed, those were all the standard
24 rates that those insurers, if we can call Medicare an
25 insurer as well for this purpose, that those insurers

1 would normally pay for the procedures that would done; is
2 that right?

3 A. Yes.

4 Q. Okay.

5 Now, you mentioned that you had been involved in
6 this investigation since December or November 2011; is
7 that right?

8 A. Approximately, in there, yes, late November, early
9 December.

10 Q. You were involved as well in obtaining the
11 information that Special Agent Weeter used in the
12 interrogation of Dr. Bajoghli in August of 2012, correct?

13 A. Obtaining what information?

14 Q. Well, Special Agent Weeter went into that -- he
15 testified that he went into that interview with
16 documentation about a patient named David Purdie.

17 A. That's correct?

18 Q. And you were involvement in getting that
19 documentation to Special Agent Weeter and Special Agent
20 Gowens prior to that interview, correct?

21 A. Yes, I was.

22 Q. And that information was largely a document that
23 was obtained from Colleen Hyde; isn't that correct?

24 A. I believe it was.

25 Q. And Colleen Hyde is an individual who worked at

1 Dr. Bajoghli's practice?

2 A. She did.

3 Q. Correct. And she -- you had signed her up as a
4 confidential informant in 2010, correct?

5 A. I didn't sign her up as a confidential informant
6 but she was signed up as a confidential informant in
7 2010.

8 Q. She was signed up by the FBI in 2010 as a
9 confidential informant?

10 A. Correct. I wasn't working on the case back then.

11 Q. Right. That's right.

12 So she continues to work there from 2010 through
13 at least August 2012 and is providing information
14 confidentially to the FBI without letting people at the
15 practice know, correct?

16 A. Correct.

17 Q. And, she would occasionally take documents from
18 the practice and bring them to the FBI, right?

19 A. Yes.

20 Q. And one of the documents that she took from the
21 practice which was given to the FBI, was a handwritten
22 frozen section report for patient David Purdie, correct?

23 A. I don't remember if it was handwritten or not, but
24 I know that was provided. I just don't know if it was
25 handwritten.

1 Q. Fair enough. There was a frozen section report
2 for patient David Purdie, correct?

3 A. There was a frozen section report in there.

4 Q. And what she had told you and the reason Dr.
5 Bajoghli was asked about David Purdie was that this was
6 an instance where Dr. Bajoghli had done unnecessary Mohs
7 surgery because it was a seborrheic keratosis and not
8 cancer, right?

9 A. Correct.

10 Q. And that's what the confidential informant told
11 you?

12 A. That's what I was informed of, yes.

13 Q. So, that's why Special Agent Weeter and Special
14 Agent Gowens asked Dr. Bajoghli about David Purdie
15 because this information had been obtained previously,
16 right?

17 A. Yes, it had been obtained previously.

18 Q. That was wrong, was it?

19 A. What was wrong?

20 Q. The diagnosis was wrong?

21 A. Which diagnosis?

22 Q. The slide that Ms. Hyde gave you the information
23 for, you're aware that Dr. Lang later reviewed that
24 slide, correct?

25 A. Dr. Lang later reviewed that slide, that's right.

1 Q. And Dr. Bajoghli had diagnosed that slide as
2 squamous cell carcinoma, I believe, correct?

3 A. I don't remember which it was, but it was a
4 cancerous diagnosis.

5 Q. It was cancerous. Squamous cell or basal cell?

6 A. I think it was basal cell actually.

7 Q. So the diagnosis was basal cell.

8 Dr. Lang agreed with Dr. Bajoghli, correct?

9 A. Yes, they did.

10 Q. So, Dr. Lang agreed with Dr. Bajoghli that this
11 diagnosis that supposedly had been obtained from Colleen
12 Hyde that was supposedly -- let me start that over.

13 Dr. Lang agreed with Dr. Bajoghli that the lesion
14 he treated on David Purdie was cancer, right?

15 A. Dr. Lang and Dr. Bajoghli looked at the same slide
16 and both agreed that it was basal cell carcinoma, yes.

17 Q. Cancer?

18 A. Cancer.

19 Q. And the form that you had been given by your
20 informant that indicated it was seborrheic keratosis,
21 that was for a completely different lesion on David
22 Purdie's body, wasn't it?

23 A. No, it wasn't. It was for the same body area.

24 Q. For the same body area, but a different spot on
25 the body area?

1 A. I don't know that. It appeared to be the same
2 spot.

3 Q. In any event, you've looked at Mr. Purdie's file,
4 correct?

5 A. Yes.

6 Q. And you're aware that that file documents Dr.
7 Bajoghli's diagnosis of that lesion as cancer, correct?

8 A. Correct.

9 Q. And, you're aware that Dr. Lang agreed with Dr.
10 Bajoghli's diagnosis, correct?

11 A. Correct.

12 Q. And you're aware as well, aren't you, that David
13 Purdie could not have been an instance where Dr. Bajoghli
14 took the frozen section and the Mohs layer at the same
15 time. You're aware of that, right?

16 A. I'm not sure how I would be aware of that.

17 Q. Well, the Mohs log for -- for David Purdie
18 indicates that there are -- there is a frozen section for
19 David Purdie, and then a couple other slides are analyzed
20 and then a Mohs layer for David Purdie, correct? I could
21 show it to you if you want.

22 A. Can I see the Mohs log?

23 Q. Sure.

24 MR. WHITE: Can you pull up 244, please.

25 MR. NATHANSON: Your Honor, I'm going to

1 object to this on relevance grounds. This isn't a
2 charged count.

3 MR. WHITE: He brought up the fact that he
4 was involved in this entire investigation, so the entire
5 investigation is relevant. And also there has been
6 testimony about this interview where Dr. Bajoghli's
7 statements supposedly changed after being confronted
8 about David Purdie.

9 THE COURT: Objection overruled.

10 MR. WHITE: Thank you.

11 BY MR. WHITE:

12 Q. Page 54, please.

13 Now, generally, before we get to the specifics on
14 this, Special Agent Palian, you recognize this to be one
15 of the Mohs logs that the techs would keep and they would
16 enter in the people and the slide numbers that they
17 were -- that they were preparing as they went?

18 A. Yes, it's the Mohs log.

19 Q. Okay.

20 MR. WHITE: And, if you could blow up the
21 bottom six lines, please. And if you could just blow up
22 the left half. That may make it bigger and more
23 readable. Thank you.

24 Q. And you're aware that this log, generally the
25 practice people have said was to log in slides as they

1 came in in sequence, the sequence that they came into the
2 lab?

3 A. Yeah, that's correct.

4 Q. And you see that -- that David Purdie came in on
5 September 3rd. That was the date of treatment, 2010,
6 correct?

7 A. Yes.

8 Q. And, he came in and there were two frozen sections
9 done, FS10-051, and FS10-052. Do you see that?

10 A. I see them both.

11 Q. And the one that -- the one that's relevant here
12 that had the cancer diagnosis, that's FS10-052. Do I
13 have that right?

14 A. Ah, yes.

15 Q. Okay. So you can see that FS10-052 comes in and
16 then there are three other entries below that. Now, FS
17 here means frozen section, right?

18 A. It does.

19 Q. And your understanding is that's the biopsy that
20 is done to determine the cancer diagnosis, correct?

21 A. That's my understanding.

22 Q. So, in this circumstance, it looks like there were
23 two biopsies done of Mr. Purdie; one on the right side
24 and one on the left side to make it easier. Is that
25 fair?

1 A. Yes.

2 Q. And then it looks like there were two other
3 patients whose B slides came in. And B slide means that
4 a Mohs layer, correct?

5 A. It does.

6 Q. So, David Purdie's two frozen sections came in and
7 two other patients' Mohs layers came into the lab.
8 That's what that means, right?

9 A. Yes.

10 Q. And then after those two other patients' Mohs
11 layers were prepared, then David Purdie's Mohs layer was
12 prepared for the left lateral forehead, correct?

13 A. Yes. It appears that way from the record.

14 Q. So, this was not a situation where Dr. Bajoghli
15 did the biopsy and the Mohs layer at the same time, is
16 it?

17 A. It does not appear that it is.

18 Q. And, in this -- this is the sequence of treatment
19 that Special Agent Weeter and Special Agent Gowens were
20 asking about when they interviewed Dr. Bajoghli in
21 August 2012, correct?

22 A. August of 2012, that's right.

23 Q. Right. Now, you can take that down.

24 You had a code name for Colleen Hyde when she was
25 a confidential informant working for you, didn't you?

1 A. I didn't provide the code name, but yes, she did
2 have a code name.

3 Q. Who provided it?

4 A. The previous agent who worked on the case before I
5 came in?

6 Q. What was her code name?

7 A. Home Slice.

8 Q. Home Slice? So your reports refer to her as CHS
9 Home Slice, right?

10 A. Sometimes, sometimes just CHS.

11 Q. And CHS means confidential human source?

12 A. Correct.

13 Q. But whenever we see that CHS Home Slice refers to
14 Colleen Hyde?

15 A. Yes.

16 Q. And Colleen Hyde worked for Dr. Bajoghli, right?

17 A. She did.

18 Q. And she is the one who gave you the frozen section
19 analysis and told you that this was an example of Dr.
20 Bajoghli doing unnecessary Mohs on a benign liaison,
21 correct?

22 A. Colleen provided me with two reports that
23 conflicted and said this was an example of unnecessary
24 Mohs surgery, that's right.

25 Q. And this is the same person who was given -- or

1 who -- basically stole prescriptions from Dr. Bajoghli's
2 practice and filled them for painkillers including
3 OxyContin, correct?

4 A. Yes. I don't know if it was specifically
5 OxyContin. I don't think it was. But, yes, it was
6 Percocet and Vicodin, I believe.

7 Q. Series of painkillers, correct?

8 A. They were series of painkillers that were
9 Oxycodone based.

10 Q. Oxycodone base, which is the base for OxyCotin,
11 correct? So, it could have been OxyCotin; it could have
12 been a generic? It could have been Vicodin?

13 A. Well, yes.

14 Q. And, you relied on information that Ms. Hyde had
15 given you in connection with that affidavit we were
16 looking at previously that you filed in court, correct?

17 A. I relied on that information.

18 Q. And you stated that she was reliable in that
19 affidavit, right?

20 A. Yes.

21 Q. Okay. There is an additional aspect to Ms. Hyde's
22 cooperation with all, and that was that she was actually
23 paid by the FBI at one point, wasn't she?

24 A. She was paid.

25 Q. When was she paid?

1 A. You can give me my report. It would refresh my
2 memory, but it was sometime in 2012.

3 Q. 2012. That's fair enough.

4 So she was actually paid by the FBI to give
5 information that could lead to a prosecution of Dr.
6 Bajoghli, correct?

7 A. She was paid by the FBI and she provided us
8 information. I won't say that it -- it could lead to a
9 prosecution because at that time we didn't know that.

10 Q. Well --

11 A. We were just gathering information.

12 Q. The purpose of the investigation is to figure
13 whether to bring a prosecution, correct?

14 A. Whether to bring a prosecution, yes.

15 Q. And you weren't asking her for information that
16 would prove Dr. Bajoghli's innocence at that time?

17 A. No, that's not true. We asked her for any and all
18 information.

19 Q. And she stole this file from his practice and gave
20 it to you and said, this was an instance where he had
21 done Mohs surgery on an SK, right?

22 A. I disagree with the word "stole", but yes, she
23 provided me the information.

24 Q. Borrowed?

25 A. Call it whatever you want, she provided it to us,

1 but it's not stole.

2 Q. Was it hers?

3 A. It was not her information, but she's entitled to
4 give it to us.

5 Q. She's entitled to give it to you?

6 A. Yes.

7 Q. It's not hers, right?

8 A. It's not hers.

9 Q. It's his, right?

10 A. It's his.

11 Q. He didn't authorize her to did it?

12 A. He did not authorize her to take it.

13 Q. To you that's not stealing?

14 A. No, because she was authorized to do it.

15 Q. By you?

16 A. By myself and the Department of Justice.

17 Q. Now, you've gotten in trouble in the past for
18 improperly giving confidential informants money, haven't
19 you?

20 A. Yes.

21 Q. And, it was also in a healthcare case, right?

22 A. No.

23 Q. Not a healthcare case?

24 A. It was not healthcare case.

25 Q. You were disciplined by the FBI for improperly

1 giving a confidential informant money, correct?

2 A. Yes.

3 Q. And, given a certain number of days off?

4 A. Yes, I was.

5 Q. Correct. Is that mistake on your part?

6 A. I'm sorry.

7 Q. Was that a mistake on your part?

8 A. It was a mistake in policy, yes. I didn't follow
9 the policy correctly.

10 Q. So you didn't follow the policy correctly. Was
11 that fraud on your part?

12 A. No, absolutely not.

13 Q. So, that was just a mistake?

14 A. It was a mistake.

15 Q. Okay. Were you unaware of some of the details of
16 the policy and that's why you made the mistake?

17 A. I was unaware of the details of policy.

18 Q. That policy maybe was complicated and you didn't
19 know all the rules when you gave that money to another
20 confidential informant, not Ms. Hyde, correct?

21 A. Right.

22 Q. So you got the rules wrong and you were
23 disciplined for it, right?

24 A. I got the rules wrong, and I was disciplined.

25 Q. But that was just a mistake?

1 A. It was a mistake.

2 Q. Relying on Ms. Hyde isn't the only mistake you've
3 made in this case. You also told the prosecutors in this
4 case that you suspected that Dr. Bajoghli at one point
5 was moving money offshore, didn't you?

6 A. Yeah, at one point, we brought a concern to the
7 defense, which turned out to be incorrect, that's right.

8 Q. So your concern was that he was moving money
9 offshore. As a matter of fact, you told the defense and
10 you told the prosecution that you believe that's what was
11 going on, correct?

12 A. That's right.

13 Q. As a matter of fact, that was a mistake, too,
14 wasn't it?

15 A. That was a mistake.

16 Q. Because actually what was going on was Dr.
17 Bajoghli was moving money from one -- moving money from
18 one US Bank to another US Bank to buy an office building
19 in McLean, Virginia, correct?

20 A. That's my understanding after the fact, yes.

21 Q. McLean, Virginia, is not offshore, is it?

22 A. It is not.

23 Q. Again, another mistake, not a crime on your part?

24 A. Not a crime.

25 MR. WHITE: Could you bring up Government's

1 Exhibit 117, please. Now, this is another one that's
2 hard to read. Government's Exhibit 117, if you could
3 blow up maybe the last part where the sequence on the
4 right changes to the pathology count, the bottom third,
5 if I have it right.

6 Q. Okay. So the bottom third of this document,
7 Special Agent Palian, lists by line the pathology counts
8 that are part of this indictment. Is that right?

9 A. Correct.

10 Q. And those list the amount that was received by Dr.
11 Bajoghli's practice for those various pathology billings,
12 right?

13 A. Yes.

14 Q. And, it may or may not go on to the next page, I
15 don't remember. But that's at least most of the
16 pathology counts here, correct?

17 A. I think it's all of them.

18 Q. Okay, thank you. And, in those instances, those
19 are instances where Dr. Bajoghli's practice billed for
20 both what's called the technical component and the
21 professional component of slide reading, correct?

22 A. Correct.

23 Q. So, in the typical slide reading as you're aware
24 from your review, under this particular code, you can
25 bill for either the technical component or the

1 professional component or both; is that right?

2 A. Right.

3 Q. And, you put a modifier on it to determine whether
4 it's the technical component or the professional
5 component instead of both, right?

6 A. If you don't put a modifier, it's considered
7 global, but, yes, if you put one of the modifiers on.

8 Q. So this would be the global amount that was would
9 received for most if not all of these?

10 A. Yes.

11 Q. Because there was no modifier put on it, correct?

12 A. Correct.

13 Q. And just to be make sure we're clear about this,
14 the technical component is actually just the taking the
15 tissue and mounting it on to a slide, right?

16 A. There's other things that go into it, yes, that's
17 the --

18 Q. But, it's generally what's going on?

19 A. Generally what's going on.

20 Q. And the professional component is the actual
21 looking at it under a microscope?

22 A. Correct, and rendering a diagnosis.

23 Q. Right, like what Dr. Lang, Dr. Rosic, Dr.
24 Patterson did?

25 A. Correct.

1 Q. And if you do both of those, under this one code,
2 you can bill for both, right?

3 A. If you do both of them, you can bill for both,
4 correct.

5 Q. The vast majority of Dr. Bajoghli's pathology
6 billings are only for the professional component; isn't
7 that right?

8 A. No, that's not true.

9 Q. Over the course of this time?

10 A. That's not true.

11 Q. That's not true. But, you are aware that there
12 are a number of times that the billings were actually
13 done for just the professional component using that
14 modifier?

15 A. My understanding is that Dr. Bajoghli was paid
16 approximately \$631,000 for --

17 MR. WHITE: Your Honor, please -- this is
18 completely nonresponsive. This is an effort to pollute
19 this record with irrelevant evidence.

20 Motion to strike.

21 THE COURT: The question that was asked did
22 not call for a monetary amount, so the objection is
23 sustained.

24 Ladies and gentlemen of the jury, don't get
25 caught up in the numbers. That's not really what the

1 issue is. The issue is whether or not these claims were
2 false.

3 THE WITNESS: Pardon me, I'm sorry.

4 BY MR. WHITE:

5 Q. So, there are instances where there -- my question
6 is, there were instances where the billing was done for
7 the professional component only by his practice?

8 A. There were instances of that.

9 Q. And those instances, you would get paid less than
10 the amounts here?

11 A. Correct.

12 Q. The ones here -- and as a matter of fact, there
13 were a number of instances, including some if not all the
14 ones here, where after the fact, there were corrected
15 claims submitted, right?

16 MR. NATHANSON: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. WHITE:

19 Q. You're aware that there was a procedure to correct
20 claims after they're submitted?

21 MR. NATHANSON: Objection, Your Honor,
22 relevance grounds.

23 MR. WHITE: He's testified to how he got this
24 money.

25 THE COURT: The objection is sustained.

1 MR. WHITE: Okay. Court's indulgence one
2 moment.

3 BY MR. WHITE:

4 Q. If we could go back to Janet Buccola which I was
5 asking you about before and if I could get you to put up
6 I think it's 12-C.

7 A. May I have 12-C?

8 Q. Sure.

9 MR. WHITE: If you could blow up the top half
10 of that, please.

11 A. Yes, sir.

12 Q. And if you recall, this was one of the ones that
13 we were talking about. I think you said you did not look
14 to see when this frozen section report was typed up in
15 the metadata.

16 A. We did not look at the metadata.

17 Q. You did not look at the metadata for that --

18 A. We did not --

19 Q. -- frozen section report, correct?

20 A. I'm sorry. I talked over you, pardon me. Would
21 you ask that question.

22 Q. Let start that over for the court reporter.

23 You did not look at the metadata for the frozen
24 section report that led you to put SK in the column on
25 your chart for Janet Buccola, correct?

1 A. We did not look at the metadata. That's correct.

2 Q. So you don't know when that document was last
3 modified, correct?

4 A. I don't know when that document was last modified.

5 Q. But this is the procedure that's charged as to
6 Janet Buccola, correct?

7 A. I believe it's the mandible.

8 Q. So it's the left mandible, basal cell carcinoma
9 which actually is what you recall it being?

10 A. Yes.

11 Q. Correct. And you see that tech listed to the
12 right there, CH?

13 A. Yes.

14 Q. That's Colleen Hyde, correct?

15 A. I believe it is.

16 Q. The cooperator that you were paying and getting
17 information from regarding Dr. Bajoghli's practice,
18 right?

19 A. CH is Ms. Hyde.

20 Q. Okay.

21 A. Ms. Hyde.

22 Q. Ms. Hyde's sister, Jennifer Hyde still works for
23 Dr. Bajoghli; isn't that correct?

24 A. To the best of my knowledge, that's true.

25 Q. Okay. Okay. Thank you. That's all I have with

1 the file.

2 Now, as to your Metasoft review --

3 MR. WHITE: Court's indulgence one moment. I
4 apologize.

5 Would you bring up Government's Exhibit 305,
6 please.

7 Q. And, what I particularly want to focus your
8 attention on, Special Agent Palian, is the Bajoghli
9 section.

10 A. Yes, sir.

11 Q. And, the column that says per schedule, that's the
12 column that you got from review of data stored in
13 Metasoft; is that correct?

14 A. I think the column says per Metasoft. It doesn't
15 say per schedule.

16 Q. I'm looking at the wrong version, I apologize.
17 Per Metasoft, thank you. That's the column that you
18 obtained by looking through the Metasoft scheduling data,
19 correct?

20 A. Yes.

21 Q. And you had bought a version of Metasoft
22 scheduling -- the Metasoft program, correct?

23 A. Yes, we purchased a version of Metasoft.

24 Q. Is that what you used to look at it or did you not
25 need it for that purpose?

1 A. We didn't need it for that purpose. It was just
2 in the Excel spreadsheet.

3 Q. Gotcha. Okay, so and I think you said that you
4 had triple checked all of the information on here to make
5 sure it was right? Is that correct?

6 A. That's correct.

7 Q. I'm going to show you what I'm having marked as
8 Defense Exhibit 164. Copy to the government.

9 I apologize, there are two.

10 If you would hand that to the witness, please.

11 I'm showing you Defense Exhibit 164. Do you
12 recognize that to be the spreadsheet? I apologize it's
13 several pages taped together, but that is a spreadsheet
14 that comes from the Metasoft program. You recognize
15 that?

16 A. It looks like Metasoft.

17 Q. Sure, and that's for the date, August 7th, 2012,
18 correct?

19 A. Where would I find that on here?

20 Q. I believe it's at the top.

21 A. Yes.

22 Q. Okay. And, on August 7th, 2012 -- could I ask you
23 to blow up the bottom two lines of the chart that is
24 Government's Exhibit 305.

25 So, on August 7, 2012, what you recognize to be a

1 Metasoft schedule spreadsheet from Dr. Bajoghli's
2 practice, does in fact show that he was in Tysons in the
3 morning, correct? It's the column all the way to the
4 left.

5 A. Yes.

6 Q. And the bottom of that in the afternoon, when the
7 actual wound closures were done on August 7th, actually
8 indicates that he was where?

9 A. I don't think that indicates that he was at
10 Woodbridge.

11 Q. The bottom left --

12 A. But, I don't think that's what that means.

13 Q. So, the document says that he was in Woodbridge
14 while those closures were done, right?

15 A. I don't know that it says that.

16 Q. Doesn't your understanding -- I thought your
17 understanding was that you would look at where the
18 location was by Dr. Bajoghli to fill in this chart,
19 correct?

20 A. Yes, it says right here, Dr. Bajoghli Tysons.

21 Q. So Dr. Bajoghli is in Tysons and it's got patients
22 listed on the Tysons location in the morning, correct,
23 for Dr. Bajoghli.

24 A. It does.

25 Q. Indicating that he was in Tysons in the morning,

1 which is why you put Tysons here, correct?

2 A. Yeah.

3 Q. It also has patients listed in Woodbridge in the
4 afternoon when these closures were done, correct?

5 A. Um, it has patients under his -- his thing here,
6 yeah.

7 Q. Under his name, and that's what you used when
8 there were patients listed under his name, that's how you
9 would use this to figure out where he was, correct?

10 A. Again, we used where it said he was, yes.

11 Q. And this document says he was actually in
12 Woodbridge, while those closures were being done, doesn't
13 it?

14 A. I don't know if I see that.

15 Q. I thought you said that you used the location of
16 the appointments in the scheduler to determine how to
17 fill in per schedule where he was?

18 A. We did.

19 Q. Right. And this document indicates --

20 MR. NATHANSON: Your Honor --

21 MR. WHITE: -- that he saw patients in
22 Woodbridge.

23 THE COURT: Hold on.

24 MR. NATHANSON: I'm going to object on
25 foundation grounds. We don't know the providence of this

1 and -- maybe we should approach, Your Honor.

2 THE COURT: All right.

3 (Thereupon, the following side-bar conference
4 was had.)

5 MR. NATHANSON: So, Your Honor, my objection
6 is as follows. This is incredibly confusing and
7 misleading to the jury because this is a document -- I'm
8 seeing this for the first time today. Presumably, this
9 was produced from the defendant's schedule that's been in
10 his exclusive custody and control since the search
11 warrant. And our material is obviously based on what we
12 seized during the search warrant.

13 We're now going to have to elicit on redirect
14 that our material is based on stuff that was obtained
15 during the search warrant, and we had agreed with
16 Mr. White not to mention the search warrant.

17 This obviously reflects a change that was
18 made to the schedule after the material was obtained, and
19 I just want to be clear that, you know, this is opening
20 the door to our redirecting Special Agent Palian to
21 discuss the circumstances that he received the data.

22 The defense has never -- despite being
23 offered has never sought to obtain a copy of our imaging
24 of the schedule, and that this is -- this is based
25 entirely on something that's been in the defendant's

1 control. And we have evidence that certainly we can put
2 on in rebuttal case that he altered the schedule after
3 the search warrant was conducted.

4 MR. WHITE: In serial fashion, none of this
5 requires them to say that there was a search warrant
6 executed. But that's not the biggest part of this, but
7 it can very easily be done to say that nobody's going to
8 object. They know that they got all of his data in
9 August 2012.

10 If they have a witness who can come on and
11 say what they got is different than that, they can use
12 it. This is what's on there.

13 The agreement was that we would use the
14 native information we had. They would use what they had.
15 That's what this is. This came off that. That was
16 there. They never looked.

17 MR. NATHANSON: I want a stipulation in front
18 of the jury that this comes from a computer program
19 that's been in the defendant's control for the last three
20 years.

21 THE COURT: Well, first of all, he hasn't
22 offered it in evidence. He just had the witness identity
23 it and go through it. He hasn't offered it in evidence
24 at all, right?

25 MR. NATHANSON: Yes, Your Honor, and we

1 object to the admission. But he's also reading from it,
2 which is improper. If it can't be submitted he can ask
3 him questions, but he's presenting it as fact to the jury
4 that the schedule that supposedly the government had in
5 its possession is different from summarized -- Special
6 Agent Palian's summary exhibit.

7 THE COURT: He certainly is doing that, but
8 he has not offered this document into evidence yet. And
9 so I understand you to be saying that you need now to
10 bring up the search warrant. I don't think you need to
11 bring up the search warrant at all.

12 I think you can bring up the fact you were
13 given a set of documents from Dr. Bajoghli's office.
14 That's what he prepared it from. This document you don't
15 know what it was prepared from. From the standpoint of
16 fairness, and if he has a witness that can offer or show
17 where this came from, that would be different, but he
18 hasn't offered it in evidence.

19 MR. NATHANSON: And certainly, Your Honor, I
20 expect to elicit from Special Agent Palian that an image
21 of what was -- I won't say seized, but what was obtained
22 by the government in August was never requested by the
23 defense. So this is necessarily based on the computer
24 program that's been in the defendant's control all this
25 time.

1 THE COURT: I don't have any problem with
2 that.

3 MR. WHITE: I don't know whether that was
4 requested by defense or not matters. I can't see why it
5 does.

6 MR. NATHANSON: We made it available in
7 discovery. We offered you.

8 MR. WHITE: That's fine. We agreed we would
9 use this. If they've got evidence, they actually look
10 and they have evidence this is different, I think we'll
11 hear about it.

12 THE COURT: Well, the thing is, you're
13 sponsoring an exhibit. You have to lay the foundation
14 for it. You have to show reliability. You haven't shown
15 that. All you've done is question the witness, produced
16 something to him and it's not in evidence.

17 MR. WHITE: I do understand. And I'm not --

18 THE COURT: So to be clear in terms of your
19 objection, A, I don't think you can bring up the word
20 search warrant. I think you can bring up that the agent
21 prepared his data based on an image of business records
22 produced by Dr. Bajoghli. "Produced by Dr. Bajoghli"
23 doesn't sound like search warrant.

24 And, you go with him, that he is very careful
25 in going over what he did. And that's what he has and

1 that's different from this. That's as far as you can go.

2 MR. WHITE: And just for the record, we make
3 a specific *Brady* request for their actual data regarding
4 that afternoon and whether it's the same or different
5 from the one we have.

6 THE COURT: We're in trial.

7 MR. WHITE: I understand.

8 THE COURT: If you looked at discovery from
9 now, it's not going to happen tonight.

10 MR. WHITE: I think it will, because they're
11 going to prove it's different.

12 MR. NATHANSON: Your Honor, if -- it's going
13 to take several days. If they want to provide us a hard
14 drive we can give them a copy of the image. It took the
15 FBI several days to do that. We made that available to
16 the defense a year after, and we're in trial right now.
17 We can do our best to produce it.

18 THE COURT: We're not starting over. We're
19 in trial now.

20 You understand what my ruling was?

21 MR. NATHANSON: I understand and certainly
22 will -- I will attempt to hone it to the word in that
23 regard. I'll do the best.

24 THE COURT: Okay, we will stop at 12:30 any
25 way.

1 (Thereupon, side-bar was concluded.)

2 THE COURT: Ladies and gentlemen, in fairness
3 of the party, because I have to leave at 12:30 and this
4 matter is detailed than the other matters we looked at, I
5 think what I should do now is break now for lunch until
6 1:30.

7 My plan is to be back at 1:30, but I've not
8 been to this judge's meeting so I'm not sure how long
9 it's going to take. But I'll let you be informed if I am
10 longer than 1:30.

11 Please don't discuss the case. Don't permit
12 the case to be discussed in your presence. Leave your
13 notes in the jury deliberation room. Thank you.

14 (Court recessed at 12:29 p.m. and reconvened
15 at 1:30 p.m.)

16 THE COURT: Ready to bring the jury out?

17 MR. WHITE: Yes.

18 THE COURT: You can bring the jury out,
19 Mr. Toliver. Thank you.

20 You may be seated. All right, counsel, you
21 may proceed.

22 MR. WHITE: Thank you, Your Honor.

23 BY MR. WHITE:

24 Q. When we left off, Special Agent Palian, we were
25 talking about Defense Exhibit 164. Do you still have

1 that in front of you?

2 A. Yes, I have that.

3 Q. That's the spreadsheet.

4 MR. WHITE: Your Honor, I didn't have a copy
5 previously. I gave a copy to your clerk so that you
6 could have one as well.

7 THE COURT: Thank you very much.

8 MR. WHITE: Thank you.

9 BY MR. WHITE:

10 Q. Now, to be fair, you recognize this to be a
11 Metasoft run from the defendant's program that he kept in
12 his practice, right?

13 A. It appears to be.

14 Q. But this was not run off of the database that you
15 got on August 9th, 2012, correct?

16 A. Correct.

17 Q. It's run off the one that was kept at the practice
18 and you haven't had access to it since August 9, 2012.

19 A. I'm sorry, I didn't mean to interrupt. I have not
20 had access to it since August 9th, 2012.

21 Q. And so whether somebody put this in after
22 August 9, 2012, you wouldn't know about that because
23 that's not the version you have, correct?

24 A. I wouldn't know if there were alterations made
25 after August 9th, 2012.

1 Q. And the data here purports to be for August 7th,
2 2012, correct?

3 A. Correct.

4 Q. And, it's -- the day that you got access to the
5 complete image of the computer of Dr. Bajoghli's practice
6 was two days later, August 9th?

7 A. Correct.

8 Q. And so you wouldn't know whether or not the
9 version you got had been completely filled out for
10 August 7th, 2012, by the time that you got access to it
11 on August 9th, correct?

12 A. I don't know what was put in after August 9th,
13 2012.

14 Q. And you don't know whether the August 7th calendar
15 had been completely filled out as of the date that you
16 got it?

17 A. Somebody could have put in something after
18 August 9th, yes.

19 Q. This document shows that he was in Tysons that
20 morning which is what your calendar entry says, right?

21 A. Yes.

22 Q. And, you also see that this document shows in the
23 far left column an abbreviation, WB and a bunch of
24 patient names under that for Dr. Bajoghli, correct?

25 A. WB and then two patient names after that, yes.

1 Q. Actually if you look at the far left, it's got WB
2 under Dr. Bajoghli, do you see that, the green and blue?

3 A. Oh, yes, yes, yes.

4 Q. So it looks like there's -- maybe ten patients in
5 the first column, another four in the second column and
6 then two in the third column?

7 A. I see what you're talking about, yes.

8 Q. All under Dr. B at WB?

9 A. I was looking at the patients that were under
10 Tysons, you're right.

11 Q. Okay. Underneath -- just to be clear, underneath
12 the Tysons part, it's got a couple of patient names and
13 there's a line that says Dr. B at WB sometime in the
14 afternoon and two names, correct?

15 A. Yes.

16 Q. And then there's a separate column that has a
17 bunch more patient names with WB at the top, correct?

18 A. Yes.

19 Q. And, WB, you know to be the nomenclature they
20 would use for the Woodbridge office, right?

21 A. Correct.

22 Q. So this one appears to show that he was in
23 Woodbridge seeing these patients that afternoon, correct?

24 A. You mean this data appears to show that?

25 Q. Okay. Now, you said that you tripled checked your

1 data before you made your chart, correct?

2 A. Yes.

3 Q. Did you quadruple check over lunch?

4 A. Yes.

5 Q. And what did you find?

6 A. I found that it did say Dr. B at WB in there.

7 Q. So, this is actually in your data, too, right?

8 A. It's in my data.

9 Q. So your data indicates that Dr. Bajoghli was
10 actually in the office at Woodbridge at this time,
11 correct?

12 A. It says that.

13 Q. And, when you triple checked it, you didn't find
14 that, did you?

15 A. No.

16 Q. And you know that issue is really important to
17 this case, don't you?

18 A. Yes.

19 Q. As a matter of fact, nobody from the government
20 even told me that you checked it and found out that he is
21 in fact innocent of those charges because he was there;
22 isn't that true?

23 A. I'm not able to render a judgment on innocence or
24 not innocent.

25 Q. You know that it matters whether he was there,

1 right?

2 A. I don't know what insurance companies these people
3 are for, so I don't know how those charges stack up.
4 It's not for me to judge that.

5 Q. But you got it wrong when you triple checked it,
6 didn't you?

7 A. What I summarized in my chart was where he was
8 based on the top there. That's where he was generally
9 all day, and we were told that he didn't change places so
10 that's why I summarized with what was on the top where he
11 says he was all day.

12 Q. You were told he didn't change places. Who were
13 you told that by?

14 A. We were told by his staff.

15 Q. By his staff. And you trusted his staff, people
16 like Colleen Hyde?

17 A. I trusted his staff, yes.

18 Q. Turns out they were wrong here. He actually was
19 in two places on that day, wasn't he?

20 A. I don't know that.

21 Q. According to this data that's what it says,
22 doesn't it?

23 A. According to this data, it suggests that he might
24 have been in Woodbridge, but I don't know that. I
25 wouldn't have personal knowledge of that.

1 Q. But you have no problem telling the jury that
2 people had told you he didn't change locations, right?

3 A. That's correct. That's what I was told.

4 Q. And you don't know if they're right either, do
5 you?

6 A. I was only told that.

7 MR. WHITE: Your Honor, at this point we move
8 the admission of Defense Exhibit 164. Seek to publish.

9 MR. NATHANSON: No objection, Your Honor.

10 THE COURT: 164 will be received.

11 MR. WHITE: May I use the Elmo, please?

12 THE COURT: Yes.

13 BY MR. WHITE:

14 Q. Okay. You see in the upper left corner of this
15 document that says August 7, 2012, correct?

16 A. Yes.

17 Q. And you see during the across the top column, it
18 says that Dr. Bajoghli in Tysons today?

19 A. Correct.

20 Q. Do you see that? And you see across this column,
21 a list of other patients that he saw in Tysons in the
22 morning, correct?

23 A. Yes.

24 Q. Okay. And, the fact that this says in Tysons
25 today is what you used to create the exhibit that said he

1 was in Tysons when the wound closures were done in
2 Woodbridge, correct?

3 A. Yes.

4 Q. What you didn't look at previously was the bottom
5 of this page, did you? You didn't look at that when you
6 put that chart together, did you?

7 A. I don't recall it being -- looking like this.
8 That's the only --

9 Q. But your version of it says that on it, doesn't
10 it?

11 A. My version says on it Dr. B, Woodbridge. I don't
12 recall the rest of it.

13 Q. Your version has these two in red here?

14 A. I didn't look at that.

15 Q. Does your version have that?

16 A. I don't know.

17 Q. What did you -- you said you looked at something
18 over the break.

19 A. Yes.

20 Q. What did you look at?

21 A. I looked at the Excel spreadsheet that had some of
22 this data, specifically for Dr. B at Woodbridge.

23 Q. And the Excel spreadsheet had Dr. B at Woodbridge
24 that afternoon, right?

25 A. That's what it said.

1 Q. So when you created the summary chart, if you
2 could bring up Government's Exhibit -- which is the
3 summary chart that lists him incorrectly as being in
4 Tysons.

5 THE COURT: 305.

6 MR. WHITE: 305. If you could bring up 305,
7 please, if we could switch. If you could blow up the
8 bottom two, please.

9 Q. So Government's Exhibit 305 which you said you
10 triple checked before you came to court and put it in,
11 lists two counts Marvin B and Joseph M as repair counts
12 here, doesn't it?

13 A. It does.

14 Q. And those two counts are actually charged in this
15 case, right?

16 A. They are.

17 Q. And, under Dr. Bajoghli location, you've got
18 Tysons, correct?

19 A. Correct.

20 Q. That's not true, is it?

21 A. Again, according to the top of this chart it says
22 Dr. Bajoghli in Tysons. That's what I relied on because
23 that was where he was ostensibly all day.

24 Q. You said you relied on the Metasoft data to make
25 this chart; isn't that true?

1 A. Yes.

2 Q. The Metasoft data indicates he was in Woodbridge
3 that afternoon, doesn't it?

4 A. The Metasoft data does say that it says, Dr. B at
5 Woodbridge.

6 Q. That's the version you have had since 2012 that
7 shows that he was in Woodbridge that afternoon, correct?

8 A. It says Dr. B at Woodbridge.

9 Q. And so your own data shows that he was in
10 Woodbridge that afternoon, correct?

11 A. Again, the chart says Dr. B at Woodbridge.

12 Q. The chart -- the data you got on August 9, 2012,
13 lists him being in Woodbridge --

14 A. That data says that --

15 Q. -- that day, so that's wrong where it says that he
16 was in Tysons, correct?

17 A. No, because he's clearly in Tysons that day.

18 Q. That morning.

19 A. All I see is Dr. B in Tysons today. That's what
20 we based the chart on.

21 Q. So you didn't bother to look and see if he
22 actually saw patients that afternoon in Woodbridge while
23 the wound closures were being done?

24 A. I don't recall whether I checked that or not. I
25 think I did.

1 Q. When you triple checked this before you brought it
2 into the court and now represented to the Court and this
3 jury that the Metasoft data shows that he was not the
4 Woodbridge when they were done, you didn't bother to look
5 at the part of the chart that shows he was there, did
6 you?

7 A. Which part, I'm sorry, I didn't hear.

8 Q. The part of the chart at the lower left that you
9 had for three years now --

10 A. I can't see from this where he -- it says Dr. B in
11 Woodbridge here. I don't know where these patients were
12 seen. It says Dr. B Tysons here underneath all that.

13 Q. Okay. So, were you right or wrong when you said
14 that he was in Tysons at the time?

15 A. I was right. He was in Tysons that day.

16 Q. Okay. But that very data you relied on to make
17 that determination shows he was in Woodbridge that
18 afternoon, doesn't it?

19 A. The data says here Dr. B at Woodbridge. I can't
20 tell what column this relates to, your far left column.
21 I can't tell where those patients were seen.

22 Q. Okay. Let's see if we can find out from the other
23 data you collect over time.

24 By the way, it says the provider on site was Janet
25 Rasmussen right?

1 A. Where is that?

2 Q. All the way to the right, licensed provider on
3 site.

4 A. That's correct.

5 Q. If Dr. Bajoghli was there, that would be wrong
6 too, wouldn't it?

7 A. Yes, if Dr. Bajoghli was there, then we should
8 have put licensed provider on site, Janet Rasmussen, Dr.
9 Bajoghli.

10 Q. And as you understand from the evidence in this
11 case, it makes a difference whether or not he was there?

12 A. Yes.

13 Q. That's why you triple checked?

14 A. Yes.

15 Q. Okay. Let's go back again to the Elmo.

16 Okay. So, on this Elmo, it lists a number of
17 patients that Dr. Bajoghli supposedly saw in Woodbridge
18 that afternoon, correct?

19 A. Yes.

20 Q. And, if we could go all the way to the right of
21 that chart, please.

22 It's a little bit harder to see here, but you can
23 probably read it on yours. The far right column lists
24 Marvin Bryant, and Joseph Mitchell, right?

25 A. Ann Kowatch, Marvin Bryant and Joseph Mitchell,

1 yes.

2 Q. And Marvin Bryant and Joseph Mitchell are wound
3 closures that were indicted and charged here, correct?

4 A. Yes.

5 Q. And they were charged here in part because Dr.
6 Bajoghli, according to your testimony, wasn't in
7 Woodbridge at that time; isn't that right?

8 A. Correct.

9 Q. And tell the jury what the time is that Marvin
10 Bryant and Joseph Mitchell's appointments were, according
11 to this calendar.

12 A. It looks like 3:45 for Bryant and maybe 4 o'clock
13 for Mitchell.

14 Q. 3:45, 4 o'clock, somewhere there in the afternoon?

15 A. In the afternoon.

16 Q. If we could go back to the right column, in the
17 right column, you see at the right column at the top has
18 Dr. Bajoghli's name at the top, correct? I'm sorry, the
19 left column has Dr. Bajoghli's name at the top, correct?

20 A. Yes.

21 Q. And it says WB. That means Woodbridge, right?

22 A. Where does it say that?

23 Q. WB, if you could look at the monitor, do you see
24 that?

25 A. Yes.

1 Q. And also the column just to the right of that it
2 says Dr. Bajoghli at WB, right?

3 A. Yes.

4 Q. And that would indicate, according to your
5 understanding of this schedule, that Dr. Bajoghli was in
6 Woodbridge from 1:15 or 1:45 on through the time period
7 of the appointments for the two people that the
8 government indicted counts for wound closure, correct?

9 A. Correct.

10 Q. And that document indicates that he was indeed in
11 the Woodbridge office when those closures were done,
12 doesn't it?

13 A. The documents says that.

14 Q. Well, let's see if we can find some corroboration
15 from other which -- other places in your file.

16 Do you see an entry for Richard Stritch,
17 S-T-R-I-T-C-H?

18 A. Yes.

19 Q. Richard Stritch, 3:30, you see that, right?

20 A. Yes.

21 Q. And that would indicate, as you understand this
22 document, that Dr. Bajoghli saw Richard Stritch in
23 Woodbridge at 3:30 that afternoon, correct?

24 A. Yes.

25 Q. Around the same time as the two wound closure

1 counts charged in this case, right?

2 A. Correct.

3 Q. Now, for -- for Richard Stritch, if we could
4 switch to the Government's Exhibit 95 at page 72, already
5 admitted in evidence, I believe. Am I correct? This is
6 already in evidence?

7 Government's Exhibit 95 is one of the documents
8 that you obtained from Dr. Bajoghli's practice, correct?

9 A. Yes.

10 Q. And, this is a business record of Dr. Bajoghli's
11 correct?

12 A. Yes.

13 MR. WHITE: And, if you could blow up the top
14 part of that, please.

15 Q. So, this document shows Richard Stritch. Does it
16 have a date of service on it?

17 A. It does.

18 Q. What's the date?

19 A. August 7th, 2012.

20 Q. Same date as the wound closures when Dr. Bajoghli
21 supposedly was not in Woodbridge, correct?

22 A. Correct.

23 Q. Does it have a location for where Dr. Bajoghli saw
24 Mr. Stritch?

25 A. It says Woodbridge.

1 Q. So it's Woodbridge. Does it have a time?

2 A. 3:30.

3 Q. And that B at the top, your understanding is that
4 means Dr. Bajoghli is the person who saw him, right?

5 A. It's my understanding.

6 Q. Okay. If we could go to the bottom half of that
7 document, please.

8 And you recognize that the bottom right that's a
9 signature for this super bill for Mr. Stritch's service
10 in Woodbridge on that afternoon, correct?

11 A. Correct.

12 Q. And 210 would be the amount that was billed,
13 right?

14 A. I believe so.

15 Q. And that looks like Dr. Bajoghli's initials there
16 similar to the other ones you've seen, correct?

17 A. Similarly.

18 Q. And that would mean that Dr. Bajoghli personally
19 saw Mr. Stritch at that time, right?

20 A. That's my understanding.

21 Q. Have you seen explanation of benefits forms in
22 connection with your work in this case?

23 A. I have.

24 Q. Handing to the government what's been marked as
25 Defense Exhibit 165, if I could give a copy to the

1 witness and the Court, please.

2 Defense Exhibit 165, does that appear to be an
3 explanation of benefits for Dr. Bajoghli's practice for
4 Mr. Stritch?

5 A. Yes, it does.

6 Q. And, does it show the billed amount of \$210, the
7 same as the super bill that's been introduced in
8 evidence?

9 A. Yes, it does.

10 Q. And does it show the date of service?

11 A. It does.

12 Q. And that's August 7th, 2012, same date we've been
13 talking about?

14 A. It is.

15 Q. When Mr. Stritch was seen by Dr. Bajoghli in
16 Woodbridge, correct?

17 A. Yes.

18 MR. WHITE: We move 165, Your Honor, and ask
19 to publish.

20 MR. NATHANSON: No objection, Your Honor.

21 THE COURT: 165 will be received. You may
22 publish.

23 BY MR. WHITE:

24 Q. Starting at the upper left, that's where it lists
25 Dr. Bajoghli's practice, correct?

1 A. It is.

2 Q. And patient's name is the same patient, Richard
3 Stritch?

4 A. Correct.

5 Q. And, for the middle of this page, it lists the
6 date of service and the billed amount, right?

7 A. Yes.

8 Q. And that billed amount is the same as the super
9 bill, correct?

10 A. It is.

11 Q. So this is related to Dr. Bajoghli seeing
12 Mr. Stritch in Woodbridge, right?

13 A. It has Dr. Bajoghli's NPI number on it, yes.

14 Q. You noticed the NPI number and you know that's Dr.
15 Bajoghli's?

16 A. Yes.

17 Q. Let's take a look -- if we could switch to
18 Government's Exhibit 95 at page 60, please. Actually --
19 I want to show you one other patient on Defense
20 Exhibit 164. You see a patient name Lilly Brown?

21 A. Which patient?

22 Q. Lilly Brown, the first one.

23 A. Lilly Brown, yes.

24 Q. You see that one?

25 A. Yes.

1 Q. So, that would say that Dr. Bajoghli saw Lilly
2 Brown in Woodbridge that afternoon 1:45, correct?

3 A. Correct.

4 Q. Now, if we could switch to Government's
5 Exhibit 95, already in evidence at page 60. If you could
6 blow up the top part, please.

7 This is already in evidence. We can get through
8 this quickly, I think. This is a super bill for Lilly
9 Brown for when Dr. Bajoghli saw her in Woodbridge on
10 August 7, 2012, the afternoon where you have testified he
11 was in Tysons, correct?

12 A. Correct.

13 Q. And it shows that he actually did see Lilly Brown
14 and billed for service that day, correct?

15 A. It appears that way.

16 Q. And if we could go to the bottom of the page,
17 please. And do you see a similar squiggle there. That
18 would be where Dr. Bajoghli signed it?

19 A. Correct.

20 Q. If you could show you Defense Exhibit 166, please,
21 with the assistance of the court security officer. This
22 is an explanation of benefits, is it not, for Lilly
23 Brown?

24 A. Yes.

25 Q. And this is for the same service you just saw the

1 super bill for?

2 A. It is.

3 Q. And this is the explanation of benefits that were
4 paid for Ms. Brown for the visit with Dr. Bajoghli in
5 Woodbridge on the afternoon of August 7, 2012, correct?

6 A. It is.

7 MR. WHITE: We move 166, Your Honor.

8 MR. NATHANSON: No objection, Your Honor.

9 THE COURT: 166 will be received.

10 BY MR. WHITE:

11 Q. And, very briefly, again, this document is similar
12 to the other one, has Dr. Bajoghli's provider number on
13 it, and shows that he billed for the service with
14 Ms. Brown on that date, correct?

15 A. It does.

16 Q. All right. So, not to make a big a point of this,
17 if you could pull up Government's Exhibit -- which is the
18 one that has the location supposedly on it? The 305?

19 A. Which location?

20 Q. That has the -- the one that lists that he was in
21 Tysons instead of Woodbridge when he was actually in
22 Woodbridge, that one. 305.

23 Could we bring that up, please.

24 So, Government's Exhibit 305, the last two lines
25 are the two people we've been talking about, Marvin

1 Bryant and Joseph A. Mitchell, Junior, correct?

2 A. Correct.

3 Q. And those are two indicted counts here, right?

4 A. They are.

5 Q. And, those are two indicted counts where the
6 theory is that Dr. Bajoghli was not there in the office
7 when the wound closures was down, right?

8 A. Correct.

9 Q. You made a mistake here, didn't you?

10 A. I'd want to go back and check my data before I
11 said that, but the data -- the schedule does say Dr.
12 Bajoghli was in Woodbridge.

13 Q. And the exhibits that the government introduced
14 show that he was in Woodbridge, right?

15 A. Right.

16 Q. You weren't trying to submit a fraud on the Court,
17 were you?

18 A. Of course I wasn't.

19 Q. You made a mistake?

20 A. It was a mistake.

21 Q. And after you triple checked it to make sure you
22 got it right, you still made a mistake?

23 A. I made a mistake.

24 Q. And that's not fraud, is it?

25 A. If this is all correct, it's a mistake and it's

1 not fraud.

2 Q. And your own data that you checked corroborates
3 everything that I just said, correct?

4 A. Not everything, but the parts that I did check
5 corroborates what you say.

6 Q. The parts that you check corroborate and the
7 exhibits that the government introduced and we just
8 introduced, they all corroborate it, right?

9 A. They do so far.

10 Q. So you have no reason to think that you were right
11 at this point when you put Tysons there, you were wrong
12 about that, correct?

13 A. I -- before I say I was wrong about that, I'd like
14 to check all the data, but yes, I --

15 Q. All right. So the data the government introduced,
16 and the data that you checked over lunch indicates this
17 is wrong. Fair to say that?

18 A. Not wrong. I mean he was in Tysons that day, so
19 I'm not really ready to say wrong.

20 Q. Was he in Tysons when the wound closures were
21 done?

22 A. No, not in Tysons. Per the Metasoft schedule at
23 the top there, it said he was in Tysons that day.

24 Q. But the Metasoft data we just went through that
25 you admitted was the same as your data shows he was in

1 Woodbridge that afternoon when these were done, doesn't
2 it?

3 A. Again I'm not trying to belabor the point,
4 Mr. White, but again it says Dr. B at Woodbridge. I
5 could confirm that.

6 Q. Right. And the documents that the government
7 introduced shows that he was in Woodbridge, right?
8 Government's Exhibit 95, those two pages I showed you,
9 they show he was in Woodbridge, don't they?

10 A. Yes, they said that he was in Woodbridge.

11 Q. And those were documents you've had for three
12 years as well, right?

13 A. Correct.

14 Q. And even though you've all this data for that
15 long, you still made a mistake, correct?

16 A. If I check the data and it looks that way, yes,
17 I'll admit that I made a mistake.

18 Q. Even though you triple checked it, you made a
19 mistake, didn't you?

20 A. If it looks that way, I'll say I made a mistake.

21 Q. And that's not fraud, it is?

22 A. No, a mistake is not fraud.

23 MR. WHITE: No further questions, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. NATHANSON:

1 Q. Special Agent Palian, I want to ask you a few
2 questions. I want to first start briefly on 164 which is
3 the schedule that defense counsel showed you.

4 A. Yes.

5 Q. See if I can -- so -- so, this is the part that
6 Mr. White showed you that had to do with -- the top of
7 this is Dr. Bajoghli, right, on the left side?

8 A. Correct.

9 Q. Okay. And wound repairs that are charged in this
10 case are part of Dr. Bajoghli's schedule; is that right?

11 A. They're not part of Dr. Bajoghli's schedule.

12 Q. And actually here on the other end of the
13 schedule -- I don't know if that's in focus or not. They
14 appear on the far right; is that right?

15 A. That's right.

16 Q. And, they appear under header that says,
17 Woodbridge/nurse; is that right?

18 A. Woodbridge/nurse, that's right.

19 Q. Okay. I just want to go through a couple other
20 topics that you discussed with Mr. White just briefly.

21 And I think I'll start, Special Agent Palian, with
22 the stuff on the easel that he started your
23 cross-examination with.

24 And you were asked a lot of questions about
25 different numbers. Do you recall that?

1 A. Yes, I do.

2 Q. Okay. And, were these numbers that you provided
3 or that Mr. White provided?

4 A. I didn't provide those numbers. Mr. White did.

5 Q. And have you had an opportunity to verify whether
6 any of these numbers are correct?

7 A. No.

8 Q. And, I think at one point, you disagreed with the
9 denominator Mr. White was using on at least some of the
10 statistics?

11 A. That's right.

12 Q. And could you explain to the jury why did you not
13 agree with the percentage that he was calculating?

14 A. Sure, so where we were talking about 4,000 Mohs
15 surgeries, yes, the defendant conducted 4,000 Mohs
16 surgery, but many of those came in after a frozen section
17 pathology which was conducted by an outside laboratory --

18 Q. I'm sorry, you said a frozen section?

19 A. Pardon me, a permanent section, where a laboratory
20 independently said this person had cancer. What we were
21 interested in is the frozen sections where Dr. Bajoghli
22 was the only person to look at that. So that's why I
23 disagreed with that denominator.

24 Q. And during your cross-examination were you
25 provided with any statistic of how many instances Dr.

1 Bajoghli did a frozen section and it proceeded to Mohs
2 surgery?

3 A. I don't believe I was.

4 Q. And have you calculated such statistics as part of
5 this case?

6 A. No.

7 Q. Have statistics been part of your investigation
8 that resulted in the charges in this case?

9 A. No, they haven't.

10 Q. I want to focus next briefly on Government's
11 Exhibit 306, please. Do you recall this one, Special
12 Agent Palian?

13 A. Yes, I do.

14 Q. And you were asked some questions by defense
15 counsel about the zeros and the repair and paid column.

16 A. Yes.

17 Q. Now, as part of this investigation, have you
18 become familiar with the CPT codes that get charged for
19 Mohs surgery?

20 A. Yes.

21 Q. And what's included in those CPT codes?

22 A. What's included in that code is a simple closure.

23 Q. So, in the instances where it says zero under the
24 repair paid, does that -- does the Mohs charge already
25 have included in it a payment for simple closure?

1 A. Yes, it does.

2 Q. And, based on your review of these code and the
3 claims in the case is there reduction in the amount paid
4 if the defendant decided not to do any closure at all?

5 A. No, there's no reduction.

6 Q. So, these are instances, the zeros, where no
7 complex closure was paid; is that are right?

8 MR. WHITE: Objection to the leading and also
9 misstates his prior testimony which leads to second
10 intention healing.

11 MR. NATHANSON: I'm happy to rephrase, Your
12 Honor.

13 THE COURT: Rephrase. Sustain the objection.

14 BY MR. NATHANSON:

15 Q. And based on your review of the claims data, what
16 if any complex closures were charged where the zero
17 appears on the repair paid column?

18 A. No complex closures were charged those days.

19 Q. You can go ahead and take that down. Thank you.

20 I want to move next to the questions you were
21 asked about a -- a cooperator in this case name Colleen
22 Hyde.

23 A. Yes.

24 Q. You recall those questions. And, I believe you
25 testified on cross-examination that early on in the

1 investigation, you relied on Ms. Hyde to provided
2 documents; is that right?

3 A. Correct.

4 Q. Now, at that time -- and you were also asked
5 questions about Ms. Hyde's obtaining pills improperly.
6 Do you recall those questions?

7 A. Yes, I do.

8 Q. Okay. And, early on in the investigation when you
9 were relying on what she was providing you, what if
10 anything did you know about this unlawful pill use?

11 A. We didn't -- we didn't know about that unlawful
12 pill use at that time.

13 Q. And approximately when did the FBI become aware of
14 that?

15 A. I think it was October of 2014, but I'm not
16 positive.

17 Q. You were asked questions about the fact that
18 Ms. Hyde was paid; is that correct?

19 A. Yes, that's right.

20 Q. And, are informants sometimes paid by the FBI?

21 A. They are.

22 Q. Is that consistent with FBI policy?

23 A. Absolutely.

24 Q. How much was Ms. Hyde paid in this case?

25 A. I think it was \$500.

1 Q. How many times was she paid?

2 A. Only once.

3 Q. I want to turn next to the questions you were
4 asked about a patient named Mr. Purdie. Do you remember
5 those questions?

6 A. David Purdie, yes.

7 Q. And, was Mr. Purdie's file something that the FBI
8 was focused on early on in the investigation?

9 A. We were focused on it early on, yes.

10 Q. And did there come a time when the FBI stopped
11 focusing on the Purdie case?

12 A. Yes.

13 Q. And is Mr. Purdie's Mohs surgery included in the
14 indictment in this case?

15 A. It is not.

16 Q. Is his Mohs procedure included in the list of 89
17 Mohs counts that have been admitted?

18 A. It's not.

19 Q. And you were also shown in connection with the
20 questions about Mr. Purdie's case, you were also shown a
21 page from the Mohs log. Do you remember that?

22 A. Yes.

23 Q. Now at the time that you were focused on
24 Mr. Purdie's case, did the FBI have in its position at
25 that point the Mohs log?

1 A. No, we did not.

2 Q. I want to next turn your attention, Special Agent
3 Palian, to the question of the frozen section pathology
4 report for Larry Brooks. Do you recall being asked some
5 questions about that?

6 A. Yes.

7 Q. Specifically about metadata?

8 A. Yes.

9 Q. And I believe you testified that as part of your
10 investigation, you did not obtain -- you did not
11 investigate metadata for various documents that are in
12 the patient files?

13 A. We did not.

14 Q. Now, in what form did the FBI obtain the documents
15 from the patient files, or the patient files themselves?

16 A. The patient files themselves were in paper form.

17 Q. Okay. And, did there come a time after trial had
18 already started that you obtained metadata for a document
19 from the Larry Brooks patient file, at least the
20 electronic version?

21 A. Yes, that's correct.

22 Q. And, at that time with the assistance of the court
23 security officer, I'd like to pass you what we've marked
24 as Government's Exhibit 700.

25 MR. WHITE: Your Honor, I don't care if

1 there's some foundational questions asked about this, but
2 I do have an objection to that if we get to that point.

3 THE COURT: All right.

4 MR. NATHANSON: I do seek to admit it, Your
5 Honor. I don't know if we should go to sidebar or I
6 should try to lay a foundation first.

7 THE COURT: Well, it's usually helpful to lay
8 a foundation first.

9 MR. NATHANSON: Happy to, Your Honor.

10 BY MR. NATHANSON:

11 Q. Do you recognize what we've marked for
12 identification as Government's Exhibit 700, Special Agent
13 Palian?

14 A. I do.

15 Q. And what do you recognize it as?

16 A. This appears to be the metadata reports for Larry
17 Brooks' file produced by the FBI.

18 Q. And is this something that you were involved in in
19 obtaining just as a matter of couple weeks ago?

20 A. I was involved in obtaining it.

21 Q. And is that the metadata for the document that
22 resembles what I believe is marked as Government's
23 Exhibit 2F?

24 A. Yes.

25 MR. NATHANSON: Your Honor, at this time we

1 move the admission of Government's Exhibit 700.

2 MR. WHITE: My objection is foundation. I
3 don't think he actually recovered that or can -- maybe he
4 can talk intelligently about it. It's gobbly-gook to me.
5 I think it was done by a separate team at the FBI. I
6 don't have a problem with asking him what he knows about
7 what it shows, even though --

8 THE COURT: I think he just gave the
9 foundation. He didn't say anything that he did it
10 personally.

11 He didn't say about him doing it personally,
12 did he, Mr. Nathanson?

13 MR. NATHANSON: No, Your Honor.

14 THE COURT: The objection's sustained.

15 MR. NATHANSON: May we approach, Your Honor?

16 THE COURT: I gave you a chance to lay your
17 foundation. Do you have a foundation? I gave you a
18 chance.

19 Come to sidebar. Come to sidebar.

20 (Thereupon, the following side-bar conference
21 was had.)

22 MR. NATHANSON: Your Honor, on
23 cross-examination, Mr. White asked Special Agent Palian
24 if he had obtained the metadata for this particular
25 document and he asked him questions about what that

1 metadata showed.

2 This is the document he relied on in answer
3 to Mr. White's questions. And this is the document that
4 Mr. White had been willing to stipulate to several weeks
5 ago as to the correctness of the data.

6 I don't know how we can -- he can answer
7 questions about a topic that Mr. White has already raised
8 with him without referring to the actual document that
9 informed him what that metadata is.

10 MR. WHITE: A couple of problems with that.
11 First off, the reason there was no stipulation is the
12 government wouldn't agree to it, but that's neither here
13 nor there for where we are right now.

14 This document has a lot of technical -- what
15 appears to be computer coding and path documentation on
16 it. If they want to call someone to explain that, then
17 they could call the person who can speak to what that
18 means. If he is a person who has the training to speak
19 to what that means, I suppose that's fine.

20 I'm not doubting the -- that the document --
21 that the document made sense to whoever got it. But,
22 there's been no foundation that he has the ability to
23 interpret it. And what it's going to present to the jury
24 is something extremely complicated that I don't believe
25 he has the technical expertise to explain. And he's not

1 the person who did it.

2 If they want to admit that, they can call the
3 person who did it and he can explain what it means.

4 THE COURT: Didn't you question him about the
5 metadata on the July 27th document?

6 MR. WHITE: I did.

7 THE COURT: And he answered those questions?

8 MR. WHITE: He did.

9 THE COURT: Did he have that document in
10 front of him when he did?

11 MR. WHITE: He didn't.

12 THE COURT: He did not.

13 MR. WHITE: That's what -- I don't believe he
14 relied on the document. I believe he relied on what the
15 document means, because that document doesn't say
16 anything that's intelligible to me.

17 THE COURT: I don't remember any objection.
18 Did you object to his testimony about that?

19 MR. NATHANSON: No, Your Honor. Special
20 Agent Palian did obtain the document. He relied on it.
21 Here's the issue. There's -- this is a report of the
22 metadata regarding the documents. Some of the document,
23 the metadata is helpful to them. Some of them does not
24 support the argument they're trying to make.

25 And Mr. White is trying to get in the stuff

1 that helps him without the rest of it. And the jury
2 needs to see the entire report of the metadata from the
3 documents to see it's not reliable.

4 THE COURT: If you have the right witness,
5 you can do that. You can also present -- I don't know
6 about the expertise of these jurors. There might be
7 somebody on the jury who has IT experience who can read
8 that code. I can't read it.

9 Can I see what it looks like?

10 MR. NATHANSON: Yes, Your Honor. May I get
11 it from the --

12 THE COURT: Sure, uh-huh.

13 MR. NATHANSON: So just to get to the crux of
14 it, Your Honor, so this is the exhibit. So what they
15 want to do, what they've elicited from Special Agent
16 Palian is that the modified data, 72709I.

17 THE COURT: He received that? It could have
18 been a space, kind of at that --

19 MR. NATHANSON: Who knows. But the issue is,
20 this data is inherently unreliable because the created
21 and the access dates are actually after the modified
22 date. And -- this is the metadata for the document we
23 all agree it's of the same document.

24 This is a unique identifier for the document,
25 actually provided to us by the defense. And this is the

1 document that was produced by the FBI cart team, the
2 computer forensic team in response to their specific
3 *Brady* request that we obtained. And we got it a couple
4 weeks ago in the middle of trial.

5 We turned it over and Mr. White asked
6 questions about this. I have a right to ask about those
7 dates as well. Because he answered on cross-examination,
8 Your Honor, that he didn't think the data was reliable.

9 And this -- this is why, I mean, in some
10 respects, Your Honor, this isn't being admitted for the
11 truth. It's being admitted to explain Special Agent
12 Palian's answer which is why he didn't think the metadata
13 was reliable.

14 THE COURT: You can ask him why he thinks
15 it's not reliable. You can ask him if he tested the
16 information, if it revealed other dates. But you can't
17 offer that in evidence because you can't lay a
18 foundation.

19 And again, I don't know what the jury knows.
20 We might have somebody on the jury, an IT professional
21 who can read this. And -- and I think it's a sideshow
22 anyway, but go ahead.

23 MR. WHITE: Your Honor --

24 THE COURT: So, you can't admit it. You can
25 ask questions about it.

1 MR. WHITE: If I may, the problem with having
2 him answer the questions is the reason there are
3 origination dates after the date it was clearly created
4 is they had a server crash. Everything had to transfer
5 to a new server. That's the problem with having him
6 testify about this, because he's not going to know the
7 answers. He's got to bring the right witness.

8 THE COURT: I'm prepared to accept what you
9 say as an officer of the court, unless you have a witness
10 that says that means nothing to him.

11 MR. WHITE: He can't have him say it because
12 he doesn't know either. It would have to be someone
13 that --

14 THE COURT: My judgment is you can ask him
15 questions about what he knows.

16 MR. NATHANSON: I will ask him to explain why
17 he told Mr. White he thought the metadata was
18 inconclusive.

19 THE COURT: That's fine. Thank you.

20 (THEREUPON, side-bar conference was
21 concluded.)

22 THE COURT: Ready to proceed, counsel?

23 MR. NATHANSON: Yes, just waiting for the
24 court reporter.

25 BY MR. NATHANSON:

1 Q. Special Agent Palian, we were -- I was asking you
2 questions about the metadata for a document that
3 resembles the Larry Brooks' frozen section report. Do
4 you recall that?

5 A. Yes.

6 Q. And Mr. White asked you some questions about it as
7 well. And, I believe your answer was something to the
8 effect that you thought the metadata was inconclusive?

9 A. That's correct.

10 Q. Why did you tell Mr. White that your conclusion
11 was inconclusive?

12 A. One of the things that you can't determine from
13 the metadata is when the original document was created.
14 It's just not a part of that -- that metadata.

15 So if, for example, a document was created and
16 then copied, you would see different conflicting dates
17 with that because of how it was copied. You would see a
18 creation date after a modified date possibly.

19 Q. Okay.

20 A. There's oddities with it that you can't really be
21 conclusive with it.

22 Q. And was that your conclusion based on your review
23 of data related to this file?

24 MR. WHITE: Objection, to his conclusion.

25 MR. NATHANSON: Well --

1 THE COURT: Sustained.

2 BY MR. NATHANSON:

3 Q. And was that why your answer was that it was
4 inconclusive as to the Larry Brooks document.

5 A. Yes.

6 Q. And, were you able to determine -- excuse me.
7 Based on your investigation, were you able to determine
8 what the last print date was of the document?

9 MR. WHITE: Objection, Your Honor. It goes
10 beyond his -- his technical expertise. He isn't the
11 person who retrieved this data, and I don't think he's
12 qualified to interpret it.

13 MR. NATHANSON: I'm just asking what he
14 knows, Your Honor, what -- whether he was able to learn
15 it or not.

16 THE COURT: Overruled.

17 BY MR. NATHANSON:

18 Q. So, Special Agent Palian, based on your
19 investigation of metadata, were you able to determine
20 what the last print date was --

21 A. No, I wasn't.

22 MR. NATHANSON: No further questions, Your
23 Honor.

24 THE COURT: May the witness be excused?

25 MR. WHITE: I think he's going to stay but

1 for our purposes --

2 THE COURT: I mean in terms of being called
3 again.

4 MR. WHITE: We may call him again.

5 MR. NATHANSON: He may be recalled.

6 THE COURT: He may be recalled. Okay, thank
7 you.

8 (Thereupon, the witness withdrew from the
9 stand.)

10 (Excerpt concluded at 2:13 p.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United State District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the excerpt testimony in the case of United States of America vs. Amir Bajoghli.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said excerpt testimony, and that the foregoing pages, numbered 1 to 155, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 30th day of December, 2016.

/s/

Renecia Wilson, RMR, CRR
Official Court Reporter